

ENGLISH LOCAL GOVERNMENT OF TO-DAY

A STUDY OF THE RELATIONS

OF

CENTRAL AND LOCAL GOVERNMENT

BY

MILO ROY MALTBY

Sometime University Fellow in Administrative Law

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

IN THE

FACULTY OF POLITICAL SCIENCE

COLUMBIA UNIVERSITY

New York

1897



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ABBREVIATIONS

Besides those in common use, the following abbreviations will be found in the foot-notes :

L. G. B.	Local Government Board.
P. L. A. A.	Poor Law Amendment Act.
P. L. B.	Poor Law Board.
P. L. C.	Poor Law Commissioners.
P. L. Com.	Poor Law Commission, 1832-4.
Reg. Gen.	Registrar General.
Rep. of Com. (Chap. V.)	Report of the Committee of Privy Council on Education.
S. P.	Sessional Papers.
V.	Victoria.

NOTE.—The page references in the foot-notes to documents found in the Sessional Papers are not to the page of the volume specified, but to the page of the document which is found in that volume. For example, Rep. of P. L. C., S. P., 1846, Vol. 19, p. 13, means that the subject referred to will be found upon page 13 of the Report of the Poor Law Commissioners, which is in volume 19 of the Sessional Papers for 1846. If there is any doubt as to the document referred to, the table of contents of the volume will decide the matter. This method of quoting references has been made necessary by the fact that the documents are not paged consecutively. Each is independent of the others.

CHAPTER I

INTRODUCTION

THE present practical problems of American public law are largely administrative. The spheres of the national and commonwealth governments were delimited by the Civil War, and the delimitation then reached has been recognized by subsequent legislation. The relation of commonwealth and local governments now demands our attention, and a solution of the problem becomes more urgent as each year passes.

The origin of the problem is comparatively recent. In the early years of our history the need of a careful delimitation of the spheres of local authorities and a determination of their relations to each other and to the state government, was very slight. But the last hundred years have witnessed most radical changes. The functions of government have increased enormously. In the period of early frontier life, the activity of the local government was almost limited to the protection of life and property. Indeed, frequent reliance was placed upon the individual himself to act as his own guardian. Soon, however, schools were established, highways constructed, and as population increased, other functions were assumed by the localities. It was not, however, until cities sprang up that the subject assumes its greatest importance. The various gigantic municipal enterprises of the present day—waterworks, street railways, gas and electric lighting, parks and commons, paved streets, public libraries and museums, sewerage systems, fire departments—were largely unknown fifty or one hundred years ago.

The reasons are two-fold. The great increase of population, not in numbers but in density, is largely the cause of the widening competence of local authorities. The effect of the greater density of population has been felt not only in the cities but also in the towns and counties. Further, local areas of the same population as formerly now have more functions to perform. Activities once considered as belonging to private individuals are now commonly recognized as governmental. Just as population increased and the competence of local authorities broadened, producing more liability of conflict, to the same extent did the importance of constructing a proper legal theory of the relation of local authorities to each other, and to the state government particularly, increase. If, as is usually believed, the highest point of development has not yet been reached, our duty to the future makes a solution of the problem still more imperative. Every victory won in the direction of civil service reform removes an objection to a still further increase in governmental functions and magnifies the importance of the problem.

The relations of the town, the county, the school district and the village, one to the other, have been quite successfully worked out, but their relation to the state government has not been so satisfactorily determined. The most important problem, however, is the exact status of the city, its relation to the town, the county and the state. We have, indeed, some idea of what the city's position actually is. We have little idea, however, of what it ought to be. The conflicting decisions of the courts, the contradictory statements of municipal reformers, and the disastrous results of the present methods of central control, prove that there is no consensus of opinion and that our present theory, if we can be said to have any theory, is not satisfactory. The cry, "Home Rule for Cities," which we hear so frequently, is

meaningless and misleading unless we know what the proper position of the city really is; and the various projects being furthered under this maxim only reflect the lack of any commonly accepted theory.

The necessity of determining the exact position of the city is urgent. How can it be expected that good municipal government will be secured, as long as those who are striving to attain it do not know what the subject is with which they are dealing? It is time that the municipal chemist cast the refractory ore into his crucible and ascertain its various components. When this has been done, and only when it has been done, can we discuss the questions of organization, functions and control with some hope of success. It is not to be concluded that good government can be secured by this means alone, nor that when this problem is solved good government will spontaneously follow, but it is to be hoped that when it has been accomplished the voyage to the desired haven will be shorter and less tempestuous than otherwise. Even the attainment of a high standard of citizenship, where honesty, intelligence and persistence are united, will not accomplish everything, for the highest possible degree of honesty and intelligence will not produce the most efficient government, unless the political principles at the foundation are correct. As yet there is such a great variety of opinion that persons equally well intentioned are working in diametrically opposite directions, and simply because their conceptions of the city are irreconcilable. Suppose it were admitted that the municipality is both an agent of the state and an organization for the satisfaction of local needs, many students would be obliged to face about and begin work for reform upon entirely new lines. The recognition that such is the position of the city would involve most radical changes in our methods of dealing with cities. The first essential is then that the position of the city be determined correctly and definitely.

After the relation of the central and the local governments has been defined, the most important problem to arise is the determination of how the central government—the commonwealth—is to control the local authorities. Whether any control will need to be exerted depends of course largely upon what the relation is between the state and the local authority, but it is usually admitted that there must be *some* sort of central control. Even the most radical believer in local self-government in its most extreme form will admit the necessity of some control. If it should be attempted to uphold total local independence of all central administrative authorities, it would be impossible to point to any nation in which such a system is in operation. Even those countries as England and the United States, which once lauded so highly the benefits of complete local autonomy, have altered their original position, and although the movement has been more rapid and far-reaching in England than in the United States, it is plainly manifest here. That some sort of central control is needed can not, therefore, be successfully contradicted. The vital questions are, of what nature shall it be; and what shall be its extent?

Three forms of control are at once suggested; the judicial, the legislative, the administrative. The judicial control aims primarily to protect private rights and to prevent the officers of the government from exceeding their powers. It is only occasionally and incidentally that other purposes are sought in its exercise. As a form of central control whose object is administrative efficiency, it is unimportant. The theoretical position and relative extent of the legislative and administrative forms of control are not so definitely settled. We believe in a general way that the purpose of administrative control is to secure efficiency, that of legislative control to promote the well-being of society as a whole. But it must be admitted that as yet we are very much at sea as to

what is the proper province of central administrative control, by whom it is to be exercised, and how far local administration is a matter to be regulated by the commonwealth and how far it is of only local importance. In other words, we are somewhat undecided as to how far local independence—local self-government pure and simple—is consistent with the highest welfare of society. Where shall administrative control begin? What are its bounds? What are the proper forms through which it shall be exercised? What control shall be reserved to the legislative body? These are vital questions, the importance of which will increase when the true relation of the central to the local governments has been determined.

Admitting the validity of these statements, we naturally turn to other countries to ascertain what methods they have adopted and how they have solved these problems. But the study of all civilized countries is not equally instructive, nor can we graft with equal certainty of securing fruit the institutions of every country upon those of our own. France and Germany might teach us valuable lessons, but the great fundamental differences between the relations of central and local governments in the continental countries and those of our own would cast suspicion upon the advisability of adopting any methods, no matter how successfully they were found to work in those countries. Further, it is impossible to ascertain what has actually been accomplished by the continental systems, because there has never been a time when central control did not obtain. The present systems have always existed; at least the theory at the bottom of them has remained unchanged, and the modifications made from decade to decade have been those of form rather than of substance.

Turning to England, an entirely different situation presents itself. Adopting, as we have, most of our ideas of

government from England, it is but natural that our institutions, our customs, our ideas of right and wrong, our laws, should be similar to those of Great Britain. Other elements have been infused, but the basic principles are still Anglo-Saxon. Especially is this true of our political institutions and the attitude of the individual to the government. In both countries, the protection of private rights is of primary importance. In both, local autonomy as far as consistent with good government is considered a fundamental maxim. In both, bureaucratic methods and despotic centralization are viewed with equal abhorrence. While political, social and economic conditions are similar, the English conception of the relation between the central and the local governments has undergone a great change within the present century. The successful system now in vogue dates from 1834. This fact enables one to contrast past and present theories and systems, to note their development, and carefully to consider their different results. Methods successful in England will not necessarily produce reform if transplanted to this country, but it is of inestimable value to us to know what methods have worked successfully in a country with which we have so much in common.

The position of England at the beginning of the present century was one of local self-government, pure and simple. The functions of local authorities were mainly concerned with the administration of poor relief, the maintenance of highways, the protection of life and property, and the administration of justice. The vestry, the borough council and the justices of the peace governed the parish, the borough, and the county respectively. The control exercised over them by the central government was either legislative or judicial, but it was so slight that practically the local authorities were left to do about as they pleased, provided they did not violate private rights or statutory enactments. This

theory of pure local self-government was found to work badly. Private rights were not trampled upon, but the efficiency of the local governments was greatly impaired, and the interests of the country as a whole were suffering. Two movements began and have continued down to the present. One had for its object complete centralization of administration, the other the introduction of a system of central control over local administration. The most important department which was once a local function but has since passed entirely into the hands of the central government is the management of prisons. Others have been centralized to a greater or less degree. The registration of births, deaths and marriages, the enforcement of factory laws, and the combating of epidemic and contagious diseases, have ceased to be local functions. Of the other fields of local government, there is not one of any importance but is subject to central administrative control. Poor relief was first made so subject in 1834, and public health, police, education, highways, and allied subjects followed at various intervals.

To comprehend the importance of these two movements, the fact must be kept constantly in view that at the beginning of the present century everything that savored of centralization was bitterly opposed. It was to be avoided with as much care as the small-pox; yes, even more, for when it was proven that local and private action was inadequate to cope with contagious diseases, they hesitated for some years before they would permit the central government to encroach upon "local self-government." Centralization was a political nightmare. The very utterance of the word brought the dead to their feet. Despotism had been so long united with a centralized form of government that it was believed that no good could come from either. Centralization *was* despotism. Local self-government was their idol, and they failed to realize that self-government in its pure form is as disastrous to good

government as the opposite extreme. Thus when central administrative control was proposed in 1834, a most heart-rending cry arose. The epithets, "unconstitutional," "the foe of Anglican liberty," "the bequest of despotic bureaucracies," were hurled with all the vehemence at command, and it was only the inexpressible wretchedness of the situation that caused its adoption. And even then, with the beneficial results before their eyes, a step in retreat was almost taken a few years later. Experience has shown, however, that there are all shades and kinds of centralization, and that between a centralized despotism and local independence there lies a middle ground where private rights are not violated, where local autonomy is not destroyed, and yet where efficiency is secured and the interests of the State conserved. The stage has now been reached where actual results are considered, and where names have ceased to have far-reaching influence. For us to repeat the mistakes they made would be the highest degree of folly. Hence, it is necessary to free our minds of all cant and prejudice, and fairly and calmly to consider central administrative control in the light of experience, to examine its principles unbiased by traditional opposition and ignorance, and ponder well whether there may not be some ideas, some methods that may aid in the solution of our problems as they have aided the English to solve theirs during the last sixty years.

The departments of local government to be treated in this study are those in which the actual work of administration is still in the hands of local authorities, but which are subject, nevertheless, to central administrative control. I have excluded all others, not because they are unimportant, but because in the field, as above delimited, are to be found the live questions of administrative science. There also, lies the debatable ground, over which so many disputes have arisen, as to what belongs to the local, what belongs to the central,

and what belongs to both the local and the central governments. The subjects that have passed entirely into the hands of the central government are almost universally admitted to belong to the central government. For the same reasons, those subjects in which the central government, through its administrative departments, controls private interests and deals directly with the individual will not be considered. It is only proposed to study those subjects in which the control is administrative, is exercised by the central government, and applies to local authorities.

The peculiar position of the metropolis has persuaded me to exclude it also from consideration in the present study. I have proceeded without reference to its position. Sometimes the acts discussed have applied to it but more frequently they have not, and I have thought it unwise to note in what particular instances the statements made in the following pages are true or false regarding it. It has been subject to so many exceptions that it is entirely separate in theory and practice from the other populous centers, and must be studied separately if studied at all. The benefit to be derived from its study by one who is seeking ideas and methods that may aid in solving our problems is slight. There is only one city in the United States that is so truly of a metropolitan character that any benefit could be received by the student of its problems from a study of the English metropolis. This city is the proposed Greater New York. But metropolitan cities are not of the same character and the very characteristics that justify a different organization, different functions and a different control from other cities, separate each metropolitan city from every other and make it absolutely necessary to work out the problems of each in distinct ways, although many of the fundamental principles are the same. Then, too, London is the capital of the Empire, the seat of the central government, and must, there-

fore, possess an organization different from that of other cities. No more would one think of considering it as representing the English idea of municipal government than of maintaining that Washington is the typical American city.

The purpose of the present study is three-fold; first, to show the growth and historical development of the English system of central administrative control; second, to outline its present legal and practical status, and third, to ascertain the actual results obtained through it. The outline followed is partly chronological and partly topical. The subject of poor relief will be first considered, because it was in this field that the control was first introduced. Then follows a chapter upon Public Health and allied subjects, which, with the previous chapter, represents one method of applying central control. The chapter on Police comes next in order, and with that on Education, explains another method, which has been adopted when the opposition to centralization was too strong to permit direct interference. Then follow three chapters upon Local Finance, Central Audit and Special Legislation. In these chapters I have not followed the method of studying the fields of local government separately but have united all of them, a more logical arrangement. I did not follow this method throughout, because the system of control, as will be seen, is not the same in each of the fields covered, and although there are many points in common, there is also much of dissimilarity, so much in fact that the exceptions to be noted in connection with any general statement that might be made would be too numerous. This is due partly to the fact that the control was not introduced in all fields of administration at the same moment, and partly to the nature of the subjects and the evils which it attempted to remedy. The other reason why I have followed this somewhat peculiar outline is that the student of administration is often interested in one subject of local government and would

much prefer to have the system as it exists in this one field described as a unit. True, the first chapter upon poor relief, for instance, does not give the complete system, for one must add the last three chapters mentioned, but to have repeated each of these under each chapter, which is the only alternative, since the system and its effects have been practically the same in all departments, would have produced confusion and useless repetition. Thus the reader is asked to pardon the apparent inconsistency, remembering that this study presents no more lack of system than does the subject to be studied.

CHAPTER II

POOR LAW ADMINISTRATION

NO department of English local government is more familiar to students of political science than that of poor relief. The extent of the field and the scope of the subject are so well known that no explanation of them is needed. The history prior to 1834 may be omitted with the exception of a brief description of the deplorable conditions then existing, which is inserted to afford the means of comparison. The historical development of central control from the time of its adoption in 1834 to the present needs no extended discussion, for the changes made since the passage of the memorable Poor Law Amendment Act have not embodied any new and radical principles, but have been intended to remedy defects and to extend the central control established in that act. Not infrequently has the life of the system hung by a very slender thread, yet it always emerged from its period of trouble with increased power and vigor. The theory of the system remains nearly the same to-day as sixty years ago. The development has been nearly symmetrical, although of slow growth. I have considered it wise, therefore, to discuss the system topically and weave in incidentally the important historical changes. Of the many acts passed since 1834, only the principal ones will be noted. Complete references would lead too far astray. The principal points to be noticed are the wide powers of the central authority which existed from the very first, and the increase in these powers whenever changes were made.

1. *The Central Administrative Authority*

Constitution. The central authority established by the Act of 1834 consisted of three commissioners appointed and dismissed by the Crown at pleasure. Separation from the legislative department of the government was assured by the provision that no person could be a Commissioner and a member of the House of Commons at the same time. Resignation of the one position had to precede acceptance of the other.¹ Three changes have since been made. The first was in 1847, when the advisability of more closely connecting this new authority with the other administrative departments and Parliament was perceived. The special purpose of the Commission, i. e., that of reforming the actual execution of the poor law and of promulgating new and correct principles, had been attained as far as could be by an independent body. The advantages of an administrative department, responsible more directly to Parliament, having the opportunity of defending itself when attacked, presenting a policy in harmony with other departments, seemed to outweigh the disadvantages arising from a possible, though not a probable, introduction of party politics into administration. Several of the chief officers of state were made Commissioners, *ex officio*,² who together with one or more persons appointed by the Crown constituted the Poor Law Board. The first person appointed was to be president, and he with one secretary might be members of the House of Commons.³ The custom of extending the life of the Board for from one

¹ *Poor Law Amendment Act*, 4 & 5 Wm. IV., c. 76, s. 1, 8. The commission was instituted for five years only, and would have expired in 1839, had the law not been re-enacted.

² These were the Lord President of the Privy Council, the Lord Privy Seal, Her Majesty's Principal Secretaries of State, and the Chancellor of the Exchequer.

³ 10 & 11 V., c. 109, s. 2, 4, 9; 12 & 13 V., c. 103, s. 21. Appointment to the presidency or secretaryship did not render a re-election necessary.

to five years at a time was followed until 1867, when it was made permanent.¹

Since 1847, no important changes have been made. In 1871, the need of simplicity and unity became so urgent that the powers of all central authorities dealing with public health, sanitation, public improvements, town improvement, drainage, vaccination, poor law, baths and wash-houses, artisans' and laborers' dwellings, registration of births, deaths and marriages, local taxation returns, and some other matters of local government, were transferred to the Local Government Board, which was really the Poor Law Board under a new name.² Since 1871, no changes have been made and the Board is practically the same as instituted fifty years ago. Literally it is not a board, it is a single headed department, for the *ex officio* members seldom if ever meet, and all orders are executed by the president, or secretary or assistant secretary when so directed by the Board.³

Subordinate officers. The relations between the central authority, whether Poor Law Commissioners or Local Government Board, and its subordinate officers have always remained very nearly the same. Assistant commissioners, inspectors, secretaries, clerks and all others by whom the clerical work of the department is done, have been and are appointed and removed by the Board.⁴ Under some of the acts, the consent of the Treasury had to be secured before certain offices could be established. The Act of 1834 limited the number of assistant commissioners to nine unless this authority should give its approval,⁵ and now the establishment of all subordinate offices must be approved, as well as the salaries attached.⁶ Even the president and secretary

¹ 30 & 31 V., c. 106, s. 1.

² 34 & 35 V., c. 70.

³ *Ibid.*, s. 5.

⁴ 4 & 5 Wm. IV., c. 76, s. 7, 9.

⁵ *Ibid.*, s. 7.

⁶ 10 & 11 V., c. 109, s. 6, 19; 34 & 35 V., c. 70, s. 3.

of the Board receive such remuneration as the Treasury sees fit to give.¹

It is evident that these provisions give the Treasury a very great power over the Board. If it should wish to exercise it, it could obstruct very materially its activity and render its influence nugatory, but I have found no instance in the sixty years of its existence where salaries have been placed so low as to prevent competent persons from accepting the positions, or when this power has been exercised in any manner to prevent the Board from pursuing its own aims and purposes. It is but one of the many instances in English law where a fear that unchecked extravagance might seriously embarrass the government has caused what might seem to be unnecessary limitations and anomalous provisions.

The duties of subordinate officers are fixed by the Board.² Their powers are specified in the various acts, but are so numerous and of such a general character that it would be difficult to enumerate them. In a general way, it may be said that they are of sufficient extent to permit the central authority to exercise a most far-reaching influence, as it lacks neither authority nor means of investigation.³

Powers in general. The powers of the central authority have been from the beginning of the widest extent and application. Some modifications have been made since 1834, but these have extended its influence rather than limited it. A detailed enumeration would be impossible, but a brief summary is necessary to show how completely the whole field of poor relief is within the jurisdiction of the Local Government Board and how few discretionary powers are left to the local authorities. Even where the Board has not expressly been given the power to interfere, it has never

¹ *Ibid.*, s. 8; 34 & 35 V., c. 70, s. 3.

² 10 & 11 V., c. 109, s. 19.

³ *Ibid.*, s. 20, 21.

failed to submit plans, suggestions and instructions upon almost every phase of administration.

The Poor Law Amendment Act authorized the Commissioners to make rules, orders and regulations for the management of work-houses, the education of poor children, the nature and amount of relief, the making of contracts, the keeping of accounts, in fact all matters relating to administration of poor relief.¹ One can hardly conceive of the enormous extent of these powers until the orders and instructions are examined, which at present form a volume of 1200 pages, 12mo. The index adds one hundred pages more and informs one that everything from "abatements" to "youths" is dealt with.² These are only the general orders—orders that affect more than one poor law union.³ The number of special orders is not known. It is almost impossible to suggest any subject upon which orders or instructions have not been issued, and oftentimes the minutest details are specified. The time of rising and retiring of work-house paupers,⁴ the amount of soup to be given each person, the preparation of food,⁵ the baptism of infants born in the work-house,⁶ and many other minor matters are stated with great precision. The local authorities can not perform a single duty which is not governed by the regulations of the Board.⁷

The limitations upon the power of the Board are few. It might be expected from the great number of acts on the statute book that numerous restrictions would be imposed, but as far as matters pertaining to the granting of poor relief are concerned the Board has almost supreme control.

¹ 4 & 5 Wm. IV., c. 76, s. 15, 42, 52; 12 & 13 V., c. 13, s. 1, 4, 5, 6, et alia.

² Macmorran & Lushington, *Poor Law General Orders*, 1890.

³ 10 & 11 V., c. 109, s. 15.

⁴ Macmorran, *op. cit.*, p. 259.

⁵ *Ibid.*, 277-8 N.

⁶ *Ibid.*, 126 N.

⁷ During the year 1895, 775 orders were issued relating to the relief of the poor and the poor rate. Report of L. G. B., 1895-6, p. 93.

Those that do exist have been so closely in accord with the most efficient administration, that they have not exerted a restraining influence. General rules can not be altered without consent of the Secretary of State,¹ but this is a mere matter of form. No instance has been found where consent was refused. Her Majesty may disallow any general rule, in whole or in part,² but I have been unable to find that any use has been made of the privilege. Neither have the courts interfered with the action of the Board.³

Financial powers. The powers of the Local Government Board over local finance will be studied in chapters VI. and VII., and therefore may be omitted here. Indirectly it may cause expenditures to be made or debts incurred through its general power of regulation, but the effect of its action in such cases upon rates or indebtedness is a matter of secondary importance with the Board. The power to order work-houses built, leased or repaired,⁴ or paid officers to be appointed by the guardians are representative instances.⁵ In all cases, the local authorities must provide the funds, whether the expenditure is voluntary or not, except of course where they would be obliged to exceed their powers as enumerated in the statutes. Whenever power has been given to alter local boundaries, that of adjusting debts, liabilities, property, has also been conferred.⁶

Powers relating to local acts. The Act of 1834 conferred comparatively few powers upon the Poor Law Commissioners concerning places under local acts. Unless there were statutes to the contrary, the orders were to apply to localities under special acts as well as others,⁷ but as a matter of fact local acts were very numerous and comprehensive. In

¹ 5 & 6 V., c. 57, s. 3.

² 10 & 11 V., c. 109, s. 16.

³ Cf. *Frewin v. Lewis*, 4 M. & C., 255.

⁴ 4 & 5 Wm. IV., c. 76, s. 25; 29 & 30 V., c. 113, s. 8.

⁵ 4 & 5 Wm. IV., c. 76, s. 46.

⁶ Cf. 33 V., c. 2.

⁷ P. L. A. A. s. 21.

1867, it was provided that the whole or part of any local act might be repealed or amended, if a petition had been presented by the guardians of any union or parish (outside the Metropolis), and if the order was confirmed by Parliament.¹ Some use has been made of this power, but much more has been accomplished under the power to alter boundaries.² Its importance becomes more manifest when it is learned that Parliament very rarely refuses to confirm the orders presented.

Power over local areas. One of the most important provisions of the Act of 1834 was that conferring upon the Commissioners the power to unite parishes, for purposes germane to the administration of poor relief, to dissolve any union so formed, to add to or take from it any parish, except when the given union had been formed—previous to 1834—for the purpose of rating or settlement,³ which included nearly all of the unions or other local incorporations formed under Gilbert's Act⁴ and the numerous local acts.⁵ These incorporated unions, parishes, or hundreds could be dissolved by a two-thirds vote of the guardians or overseers, but in the absence of such voluntary action, the Commissioners were powerless. Personal interests, local prejudices and opposition to central control retarded very much the proper extension of the new system, perpetuating in many places the vices and corruption of the old régime.

¹ 30 & 31 V., c. 106, s. 2; 42 & 43 V., c. 54, s. 9.

² Cf. Rep. P. L. B., S. P., 1868-9, Vol. 28, p. 24.

³ P. L. A. A., s. 26, 32, 37.

⁴ 22 Geo. III., c. 83.

⁵ Single parishes or incorporations might be joined with others if the administrative machinery created by the earlier acts was undisturbed, but dissolution or interference with their authority was impossible. Cf. 6 A. and E., I, 34, 41, 54, 56. In 1834, 67 Gilbert's unions had been formed, including 924 parishes. Nicholls, *History of the English Poor Law*, II, p. 98. The number under local acts is unknown; even estimates are very unsatisfactory. It was certainly very much larger.

It was this fact together with the beneficial results already obtained that soon induced an extension of authority, and by slow and steady growth the central authority has come to possess almost limitless power. The Board may form, add to, take from or dissolve any union, may combine unions and constitute a joint committee of guardians, may divide a union which is in two counties into two unions for all purposes except maintenance of a common work-house and indoor poor, may unite small parishes or divide large ones, may divide into wards for the election of guardians, in fact it has almost absolute control over local areas as far as the administration of poor relief is concerned. There are some instances where the consent of the local authority must be secured or a representation have been made to the Board, but these are rather few, and the opportunities of hindering its free action are rare.¹ No exception is made for local acts, and the old unions and incorporations have probably all ceased to exist.²

The Board has always made frequent use of its authority. In the year 1868-9, twelve incorporations were dissolved and reformed.³ In 1878, thirty-six inquiries were made regarding divided parishes.⁴ In 1882, sixty-two inquiries were held and only five orders had to be confirmed by Parliament, and these were passed without modification.⁵

In 1893, there were 648 unions in England and Wales (including London) containing 14,684 parishes. The unions vary greatly in size. In some there is only one parish, while

¹ The most important sections are: 4 & 5 Wm. IV., c. 76, s. 26, 32; 7 & 8 V., c. 101, s. 36, 40-47, 66; 30 & 31 V., c. 106, s. 3; 31 & 32 V., c. 122, s. 4, 6; 39 & 40 V., c. 61, s. 1-12; 42 & 43 V., c. 54, s. 4-8; 45 & 46 V., c. 58; 51 & 52 V., c. 41, s. 58.

² Cf. Wright & Hobhouse, *Local Government and Local Taxation*, 1894, p. 13.

³ Rep. P. L. B., S. P., 1868-9, Vol. 28, pp. 22-3.

⁴ *Ibid.*, 1878, Vol. 37, Pt. I., pp. 53, 54.

⁵ *Ibid.*, 1883, Vol. 28, pp. 44, 45, 47-9.

others contain several hundred. The population varies from 444,000 to 2,300. The average union contains nearly twenty-three parishes and a population of 46,000.¹

Powers regarding local authorities. The power of the Board to issue orders covers such a wide field that the only important functions left to the guardians are the granting or refusing of relief in individual cases, and the accepting and holding of property for the benefit of the union. But the control extends beyond the general power to issue orders. The Board determines the number and duties of the guardians, subject to a few minor limitations imposed by law, and apportions them among the parishes.² It may require the guardians to appoint such subordinate officers as it thinks necessary to assist in the administration of the poor laws. The qualifications, duties, method of appointment and removal, tenure, amount of salaries of such officers and the persons by whom they are paid are likewise fixed by the Board, which may of its own accord remove any *paid* officer.³ If the local authorities refuse to act, it may step in and perform the neglected duties.⁴

In practice the Board has not failed to exercise these powers quite extensively. A union is usually obliged to appoint fourteen officers and their assistants.⁵ The mode of appointment, remuneration, qualifications and duties are specified in great detail.⁶ The more important officers can be removed only by the Board, a few others only with its consent, but those performing merely ministerial duties can

¹ Wright & Hobhouse, *op. cit.*, p. 13.

² P. L. A. A., s. 38, 41; 7 & 8 V., c. 101, s. 17, 18; 56 & 57 V., c. 73, s. 20.

³ P. L. A. A., s. 46, 48; 12 & 13 V., c. 13, s. 5.

⁴ 10 & 11 V., c. 109, s. 24; 31 & 32 V., c. 122, s. 7.

⁵ *Consolidated Order*, July 24, 1847, art. 153.

⁶ *Ibid.*, art. 155-223. Other Orders may be found in Macmorran & Lushington, *op. cit.*

be removed upon the single condition that the dismissal with the reasons therefor be reported to the Board.¹ The power of the Board to remove is exercised in comparatively few cases, but is very effectual.

The figures for the two periods 1870-4 and 1890-3, and the year 1895, were:

Annual Average.	1870-4. ²	1890-3. ³	1895. ⁴
Total number of paid officers	15,265	21,659	22,882
Voluntary resignations to escape inquiry ..	37	24	10
Forced resignations	51	53	41
Dismissals	68	77	55
Total	156	154	106

While the total number of paid officers has increased fifty per cent., the number of resignations and removals has decreased thirty-two per cent. in the last twenty-five years. This decrease is due not to any leniency upon the part of the Board, but to an increased efficiency which has resulted from the recognition of the power and determination of the Board to remove inefficient officers. Serious differences of opinion between the guardians and the Board seldom arise, but the former are inclined to be more liberal than the latter, and a more strict observance of obligations is secured than would be under purely local responsibility.⁵ The number of cases of actual interference is small, but this is a favorable sign, as fear of interference is preferable to actual domination.

¹ *Ibid.*, art. 187-197. Order of Feb. 12, 1879, amending previous Orders. The power of the Board to remove is almost unlimited. It is not obliged to give any reasons for its action, or even previous notice. Cf. 19 Law J., 70.

² S. P., 1871, Vol. 27; 1872, Vol. 28; 1873, Vol. 29; 1874, Vol. 25; 1875, Vol. 31.

³ S. P., 1891, Vol. 33; 1892, Vol. 38; 1893, Vol. 43; 1894, Vol. 38.

⁴ Rep. of L. G. B., 1895-6, p. 530, App. ⁵ Aschrott, *op. cit.*, p. 161 N (2).

Quasi-judicial powers. The Local Government Board is properly an administrative authority, but in a few instances it may exercise powers that are judicial in character. It may determine questions as to cost of relief, settlement, removal, or chargeability of any poor arising between local authorities of different unions, provided they agree to submit the case at issue. The decisions are final and cannot be questioned even in a court of law, unless appealed to the Court of Queen's Bench within a short time.¹ About a dozen cases are annually decided and opinions are given in many others.² The aid thus given facilitates administration to no small degree, saving much expense and economizing time. Were it not for this plan all cases would have to be taken before the Quarter Sessions or Court of Queen's Bench. The large decrease in the number of cases referring to the above subjects is probably due in a large degree to the privilege of appealing to the Local Government Board.³

The Board was also until 1894 empowered to decide objections to the validity of the election of guardians, and was not limited to questions of law, but could institute an inquiry and decide questions of fact as well.⁴ Qualifications of electors and nominees, forms of ballots, management of elections, counting of ballots, notices, *et cetera*, could be investigated and decided upon. Certificates of election could be issued or a new election ordered. About fifteen cases were decided annually, and the returning officer was almost always declared to be wrong.⁵ The returns could also be questioned by an election petition to the Queen's Bench Division of the High Court⁶ or by *quo warranto*.⁷ The Local Government

¹ 11 & 12 V., c. 110, s. 4; 14 & 15 V., c. 105, s. 12.

² *Vide* Reports of L. G. B. ³ *Cf.* Rep. P. L. B., S. P., 1860, Vol. 37, p. 22.

⁴ 5 & 6 V., c. 57, s. 8; 30 & 31 V., c. 106, s. 12; 47 & 48 V., c. 70, s. 36.

⁵ *Vide* Reports of L. G. B.

⁶ 47 & 48 V., c. 70, s. 36; 45 & 46 V., c. 50, s. 87 *et seq.*

⁷ *Cf.* 10 & 11 V., c. 109, s. 25.

Act of 1894 deprived the Board of these powers and gave the County Council power to call a new election in case difficulties arise respecting election,¹ but this of course does not deprive any one of his judicial remedies.

Powers of inquiry. That the Board may effectually and wisely exercise its authority, it has been given the widest powers of investigation and inquiry; not as wide as are possessed by similar bodies in countries possessing a more centralized system of government, but very marked when the Anglo-Saxon opposition to governmental interference is considered. The Board may require the attendance of all persons upon an inquiry relating to any subject connected with the powers it is authorized to exercise, may examine them and require the production of necessary papers and documents, or may appoint agents and delegate its powers to them.² The latter is the method actually used, and to facilitate the work the country is divided into several districts and a number of Inspectors provided. These serve not only as intermediaries between the local authorities and the central government, but are constantly alert to discern and report any infraction or non-observance of Orders or Acts of Parliament. Very properly have they been called "the eyes and ears of the Board." They attend the meetings of the guardians and often take part in the proceedings, but cannot vote. Work-houses and all other places where relief is given are visited and advice given where needed or requested. Thus the experience and knowledge of the whole country are placed within reach of the local administrators. Complaints are investigated and reports made. In the first years of the existence of the Poor Law Commissioners, more interference and minute supervision were necessary than at present, when little actual interference is called for and the control

¹ 56 & 57 V., c. 73, s. 48, 89.

² 4 & 5 Wm. IV., c. 76, s. 2, 12, 13; 10 & 11 V., c. 109, s. 11, 13, 21, 22, 26.

assumes more the form of advice and consultation. Probably its very existence exercises a salutary influence, and it certainly is a potent factor in bringing to light improper acts and in disseminating knowledge.

The execution of law. In order to understand fully the legal and practical position of the Board, it is necessary to ascertain how compliance with the statutes is guaranteed. The Board is kept within its proper sphere by private interest acting through the ordinary judicial control, the power of the Crown to remove the president, and the power of Parliament to abolish the system when it becomes obnoxious. To prevent inactivity, the power of removal exists, but this charge is not likely to be preferred against the Board. Its tendency has been to exceed its powers rather than to neglect to perform its duties.

A more pertinent question might be asked as to the methods used to enforce the laws passed by Parliament and the regulations of the Board. There are three methods, one judicial and two administrative. The first embraces all the ordinary judicial remedies, which are open to the private individual as well as the central government.¹ The second arises from the power of the district auditors—agents of the Board—to disallow and surcharge any illegal expenditure made by a local authority, and from the power of the Board in its appellate jurisdiction. But as this will be discussed in chapter VII, further consideration may be omitted here, after stating that it is very effective in all cases where an illegal act results in expenditure or is directly connected therewith. The third springs from the power to remove any paid officer. This does not apply of course to the guardians. They must be reached through the first and second, but as their powers are limited, these methods are quite adequate to secure efficient administration. Since paid officers are

¹ *Vide, e. g., 4 & 5 Wm. IV., c. 76, s. 98.*

the ones upon whom the burden of the work falls, the power of removal becomes important. Of course it does not necessarily follow that if an inefficient officer is removed, a suitable one will be chosen; but since the Board may remove the new appointee or appoint one itself if the guardians fail to act within a definite time, it has practically almost supreme control over all paid officials. Successive removals would ultimately compel conformity to its wishes. Perhaps not quite as efficient persons are selected in some instances, as would be were the Board given power to appoint as well as remove, but such a course is objectionable on other grounds. The Board is apt to accept persons who do not quite reach its standard rather than continue the dispute. But this is more of a theoretical defect than an actual one. The possibility of dismissal and the occasional exercise of the authority have been sufficient to make the local officials realize that they are responsible to the central Board rather than to the guardians. The other power of determining their duties, qualifications and salaries makes it certain that an efficient corps of local paid officers will be maintained, and that rules and statutes will be strictly enforced if the Board desires.

To render the control still more effective, recourse may be had to all three of these processes; the application of any one does not bar the others. In not every instance is it possible, but where each is applicable, all *may* be used. If an officer has expended a sum illegally, he may be removed from office, the expenditure surcharged and collected, and the ordinary judicial proceedings begun. In practice, such a course is not frequently followed; the administrative remedies are usually sufficient both as cure and preventive, and are among the principal reasons why local administration has been kept up to such a high standard.

Such is the legal and practical status of the present system—not widely different from that of the fourth decade. It is evident that the position of the Local Government Board is the key to the whole situation. When one knows its attitude, one knows the attitude of the local authorities. When it demands rigid enforcement, the local authorities are strict. When it is lax, slackness is seen in local administration. It is true that the latter is not a *necessary* consequence of the former, and there may be exceptions, but the past sixty years have proven the truth of the statement in most localities. Many instances might be given to show that when central control relaxed, pauperism increased; but one brief allusion is sufficient. During the fifties and sixties, pauperism increased absolutely and relatively, and while most of it was due to industrial and commercial conditions, it is interesting to note that the Poor Law Board was very lenient in the years just previous to 1871, and it is usually conceded that its position contributed its share in increasing pauperism.¹

2. *Effect upon Pauperism*

Passing now to consider the effect of the system just depicted upon the nature and extent of pauperism, I shall briefly contrast past and present conditions, strive to ascertain the causes of inefficient administration prior to 1834, describe the alterations made by the Poor Law Amendment Act, investigate the causes of the increased efficiency since the enactment of this law, and show thereby how far central control has been the cause.

The woeful conditions which existed during the first part of this century are generally known, but to estimate cor-

¹ Cf. Chance, *The Better Administration of the Poor Law*, p. 5.

rectly the effect of central control, it is necessary to contrast briefly the conditions previous to 1834 with the present.¹

"The poor-rate," says Harriet Martineau in describing the earlier period, "had become public spoil. The ignorant believed it an inexhaustible fund which belonged to them. To obtain their share, the brutal bullied the administrators; the profligate exhibited their bastards which must be fed; the idle folded their arms, and waited till they got it; ignorant boys and girls married upon it; poachers, thieves, and prostitutes extorted it by intimidation; country justices lavished it for popularity, and guardians for convenience. This was the way the fund went. As for whence it arose,—it came more and more every year out of the capital of the shopkeeper and the farmer, and the diminishing resources of the country gentlemen. The shopkeeper's stock and returns dwindled, as the farmer's land deteriorated, and the gentleman's expenditure contracted. The farmer's sons, waiting, at the age of five-and-thirty, for ability to marry in comfort, saw in every ditch and field on the estate, lads under twenty whose children were maintained by the rates which were ruining their employers. Instead of the proper number of laborers to till his lands—laborers paid by himself—the farmer was compelled to take double the number, whose wages were paid partly out of the rates; and these men, being employed by compulsion on him, were beyond his control—worked or not as they chose—let down the quality of his land, and disabled him from employing the better men who would have toiled hard for independence. These better men sank down among the worse; the rate-paying cottager, after a vain struggle, went to the pay-table to seek relief; the modest girl might starve, while her bolder neighbor received 1s. 6d. per week for every illegitimate child. Industry, pro-

¹ For an extended description, the reader must be referred to the invaluable report of the Poor Law Commission of 1832-4, S. P. 1834, Vol. 27 *et seq.*

bity, purity, prudence—all heart and spirit, the whole soul of goodness—were melting down into depravity and social ruin, like snow under the foul internal fires which precede the earthquake.”¹

The transformation which followed the actual operation of the Poor Law Amendment Act was sudden and far-reaching.

“Before two years were out [*i. e.*, after 1834] wages were rising and rates were falling in the whole series of country parishes; farmers were employing more laborers; bullying paupers were transformed into steady workingmen; the decrease of illegitimate births, chargeable to the parish, throughout England, was nearly 10,000, or nearly thirteen per cent.; clergymen testified that they were relieved from much of the pain and shame of having to celebrate marriages where the bride was on the point of becoming a mother, or where the parties were mere children, with no other prospect than the parish pay-table; and, finally, the rates, which had risen nearly a million in their annual amount during the five years before the poor-law commission was issued, sank down, in the course of five years after it, from being upwards of seven millions to very little above four.”²

If one wishes a quantitative measure of the great reform of the last sixty years, the following table is of great interest:

¹ Harriet Martineau, *History of the Peace*, iii, pp. 324–5, Boston, 1866, Bk. IV., Chap. vii.

² Harriet Martineau, *op. cit.*, p. 333.

Year ended at Lady-day	Price of Wheat per Quarter ¹	Population deduced from Census Returns ¹	Expended for the Relief and Maintenance of the Poor ¹	Rate per Cap. of the Population ¹	Amount raised. Rate per £ of Ratable Value ²	Paupers per 1000 of Population ³
	<i>s. d.</i>		£	<i>s. d.</i>	<i>s. d.</i>	
1818	84 1	11,876,200	7,870,801	13 3		
1824	62 0	12,517,900	5,736,900	9 2		
1832	63 4	14,105,600	7,036,969	10 0		
1834	51 11	14,372,000	6,317,255	8 9½		
1835	44 2	14,564,000	5,526,418	7 7		
1837	52 6	14,955,000	4,044,741	5 5		
1848	64 6	17,150,018	6,180,764	7 2¼	.....	62.7 ⁴
1856	75 4	18,829,000	6,004,244	6 4½	.....	48.7
1861	55 10	19,902,713	5,778,943	5 9¾	.....	44.4
1866	43 6	21,145,151	6,439,517	6 1	I 5.4	43.3
1871	49 8½	22,501,316	7,886,724	7 0	I 6.4	46.1
1881	43 7	25,714,288	8,102,136	6 3½	I 2.3	30.8
1891	32 8	28,762,287	8,643,318	6 0	11.8	26.4
1895	21 7	30,060,763	9,866,605	6 3¾	I 1.0	26.5

But these facts do not begin to express the full extent of the reform. The decrease in the rate of expenditure and the proportional number of paupers tells us nothing of their treatment or the conditions of the vast laboring and merchant classes which are not dependent upon aid from the state. Even those supported from the poor-rates are much better cared for than formerly, indeed, as is claimed by some, to the extent that pauperism is made too inviting instead of being extremely repulsive. And it must not be forgotten that indirectly the better administration of the law has been a most potent factor in elevating the laboring classes to their present position of high intelligence and superior industrial capability.

The causes of the deplorable condition into which the

¹ Report of P. L. B., S. P., Vol. 23, 1850, pp. 146-7, App. Rep. of L. G. B., S. P., Vol. 31, 1876, p. 282, App. *Ibid.*, 1896, p. 478, App.

² *Ibid.*, p. 478, App.

³ *Ibid.*, p. 412, App.

⁴ Figure for 1849.

administration of the poor laws had fallen at the opening of the fourth decade may be divided into four classes: industrial and social conditions, wrong principles of granting relief embodied in the statutes, erroneous ideas in the minds of the people and their public officers concerning pauperism and how it should be dealt with, and defects in the plan of administration. Most of the discussion has been waged over the relative importance of the last three classes, and it was a vital question in 1834, for upon the answer depended the nature of the reforms to be adopted.

Lord Brougham, then Lord Chancellor, fittingly and truthfully depicted local administration in the following words: "When you look at a district in which a better system of administration has been adopted, and contrast it with one—perhaps the very next parish—where the bad course has been pursued, you would hardly think that you were looking at two parts of the same island, so different are the effects. In one paupers disappear and industry gains its just place; while, upon crossing a brook, you find in the other parish a swarm of sturdy beggars depriving the honest laborer of his hire, and the rental crumbling down daily and hourly into the poor's box—always filled and always empty. Then, how comes it to pass that, with the example before their eyes, the authorities in the latter parish persist in their course?"¹ If this be true of places under the same statutes, we must look for an explanation outside of the statutory principles according to which relief is given.

That it was possible to have wise and efficient administration without exceeding the provisions of the law, goes to prove the same conclusion. There were instances—not numerous, I know—in which poor rates had fallen to a minimum, pauperism had decreased, and morality and in-

¹ Hansard, *Parliamentary Debates*, 3d Series, Vol. 25, p. 232. See also Vol. 22, p. 875.

dustury had reappeared. The best example recorded is that of Southwell, a parish near the center of Nottinghamshire, having a population of 3,384 in 1831. During the year 1832-3, only £605 14s. were expended in relieving the poor, although eleven years previous, over three times as much had hardly sufficed. From a state of affairs where the circle of pauperism embraced nearly the whole laboring population, where the parish was considered an unfailing source of relief at birth, at death, in youth, in old age, in sickness, in health, where there was nothing to stimulate self-reliance and frugality, the parish came to possess a happy, thrifty, industrious class of laborers, became a parish to be imitated and admired. The causes of such a transformation were principally the rigid application of the work-house test and the untiring efforts of one man.¹ Other instances might be cited in which similar results were attained under statutes that were general and not special in their application, and by methods provided for in the law.² This fact was even used by some as an argument to show that no legislative act was needed, that the changes the reform bill proposed would be ineffective and that efficiency could be secured without.³

Many abuses did indeed spring from a total disregard of the existing statutes. The payment of any deficiency in wages from the poor rates was forbidden, but the law was constantly disobeyed.⁴ A justice of the peace could grant aid *only* in cases of emergency,⁵ but from the frequency with which relief was thus given, one would judge that nearly all cases were emergency cases. Even Gilbert's Act,⁶ which

¹ Nicholls, *A History of the Eng. Poor Law*, ii, pp. 241-7.

² Hansard, *op. cit.*, Vol. 25, p. 598.

³ *Ibid.*, 265.

⁴ Nicholls, *op. cit.*, i, pp. 2, 165, 172, 188; ii, pp. 231-3. Hansard, *op. cit.*, Vol. 25, p. 445.

⁵ 59 Geo. III., c. 12, s. 2.

⁶ 22 Geo. III., c. 83.

tended to make recurrence to parish aid as easy as possible, did not authorize the parish or union to assume the responsibility of maintaining every laborer. The local authorities gave it this unwarranted construction,¹ not always of their own desire, but because refusal was often followed by destruction of property and personal violence.²

A consideration of the statutes, however, shows some defects. The laws regarding illegitimate children and their parents, the conditions upon which settlement could be gained or lost, the failure to distinguish between the different classes of paupers were important factors in producing illegitimacy, preventing the free migration of labor, and keeping a locality overburdened with dependent poor when there was a demand for labor elsewhere. But there was still an enormously large amount of pauperism unaccounted for, and the causes must be sought elsewhere.

The influence of false ideas also is seen in the prevalence of the custom of making up wages from the poor rates, or in the attempt on the part of the parish to assume the position of *entrepreneur*, to provide work when otherwise not obtainable or to oblige the landowners to hire paupers instead of independent laborers. These and many other erroneous ideas that existed in the minds of the local authorities were *directly* responsible for a large portion of the pauperism, and it might appear at first sight that higher intelligence, more economic training, greater political capacity were the great needs. Undoubtedly a great reform would have resulted could these transformations have been brought about; and had these

¹ Nicholls, *op. cit.*, ii, p. 232.

² *Vide Extracts from the Information received by His Majesty's Commissioners as to the Administration and Operation of the Poor Laws*, London, 1833, pp. 27, 31, 35, 137, 138. Fowle, *The Poor Law*, p. 77. (I have used this book of *Extracts* for my references because of its greater convenience and accessibility. The original documents have been consulted, but probably will not be available to most readers.)

qualities existed to a greater degree, England would never have fallen into such a deplorable condition. But to go still farther back, was it not the fault of the system of administration that such ideas were permitted to govern the distribution of aid? No system is correct which does not fit the actual* conditions. Thus, in the state of affairs then existing it was an unpardonable defect in the administrative system to allow the local authorities to exercise so much discretionary power when they were unable to resist the importuning of paupers, the threats of the vicious and the falsely humanitarian sentiments of the community, and when they did not possess the required knowledge and experience, if they had the determination. The educational, moral and political status of the people was given, and it was the duty of the legislator to frame a system that recognized these facts, and yet which would in spite of them obtain efficient administration. It was not a question of what was ideally the best system, but what would obtain the best results under the conditions. That such a course was possible was proven by the great reforms accompanying and effected by the new administrative system established in 1834. Lord Althorp, then Prime Minister, expressed the general opinion of the time, which was in line with this view, when he stated upon the first reading of the Poor Law Amendment Bill: "It was, therefore, to the abuses of the system of poor laws, not to the system itself—it was to the bad administration of those laws, not to their principle, that he objected."¹ "The reason of want of success was the fact of there being no superintending authority to see to their execution."² To be convinced that the Poor Law Commission of 1832-4 came to the same conclusion, one has but to read its report and recommendations.³

¹ Hansard, *op. cit.*, Vol. 22, pp. 876, 878.

² *Ibid.*, Vol. 23, p. 995.

³ S. P., 1834, Vol. 27, pp. 157 *et seq.*

At the time of the debate upon the proposed bill, further, it was almost universally recognized that the really important feature was the plan of central control. To the proposal that the bill be divided into two parts, one "to provide an executive power * * * to carry the poor laws into effect," and one "to amend the old laws and enact new laws," it was replied that "all the other provisions of the Bill to a great extent depended upon the adoption of that principle" (*i. e.*, that of central control).¹ The Lord Chancellor stated, and the great prominence given to the plan in the Parliamentary debates substantiates the statement, that "the main principle of the measure is this—to leave the law, generally speaking, as it stands at present, but to tread back our steps as far as we can towards a due administration of it."² The Report of the Commission of 1832-4 emphasized the same idea.³

If this is a true diagnosis of the case, one would expect to find any reform that might have been effected to have been brought about by a change in the system of administration. Let us examine, therefore, the Poor Law Amendment Act of 1834 and see what were the changes introduced by this well-known law to which so much has been often ascribed.

The provisions of the Act may be divided into two distinct classes; one including all provisions germane to central control, the other including all else. Reversing the order, let us ascertain what the second class includes.

It is hardly necessary to enumerate the many provisions relating to the election of guardians, the qualifications of voters, the apportioning of expense, the fines imposed for

¹ Hansard, *op. cit.*, Vol. 23, p. 458.

² *Ibid.*, Vol. 25, p. 235.

³ Cf., also Leroy-Beaulieu, *L'Administration Locale en France et en Angleterre*, pp. 229-230; Pashley, *Pauperism and Poor Laws*, p. 265; Chance, *op. cit.*, p. 2; *Edinburgh Rev.*, Vol. 74, p. 26; also Hansard, *op. cit.*, Vol. 23, p. 828. *Report from His Majesty's Commissioners for Inquiring into the Administration and Practical Operation of the Poor Laws*, London, 1834, W. Clowes & Sons, pp. 280-1.

disobedience of law, and the many other details. They are but the proper measures for carrying the law into execution and are not important for our purpose. The Act further specified that guardians might agree, with the approval of the Commissioners, that the united parishes should become one parish for the law of settlement.¹ Settlement by hiring and service, and by serving as an officer was abolished. Neither could it be acquired by occupying a tenement, unless the poor rate had been paid for an entire year; nor by estate, unless the owner should live within ten miles thereof.² Removal was made impossible until after three weeks' notice had been given to the parish to which the order of removal was directed, unless the order were submitted to, nor until appeal had been decided by the court in case there was a dispute as to settlement of the pauper.³ The acts relative to the liability and punishment of the putative father were repealed, and the burden of maintenance placed upon the mother. The Court of Quarter Sessions could, upon application of the overseers, make an order on the putative father for the maintenance of the child if it became chargeable, but this could not be done as formerly, upon the uncorroborated testimony of the mother, and even then no aid was to be given to the mother.⁴ Persons concerned in the administration of the poor laws were forbidden to be a party to any contract or sale of goods for relief of the poor.⁵ The other provisions that might be included in this class were not of sufficient importance to deserve notice.

In striking contrast is the system of central control with its large powers and far-reaching supervision. The outline of the present system as given in preceding pages is not quite a true picture of the system as it existed in the fourth decade, but when allowance has been made for an increase in power

¹ P. L. A. A., s. 33-36.

² *Ibid.*, 64-68.

³ *Ibid.*, 79-84.

⁴ *Ibid.*, 69-76.

⁵ *Ibid.*, 77.

over local acts and areas, it will be found to represent it very nearly. Practically, the administration of poor relief was under the control of the Poor Law Commissioners from the very beginning.

A comparison of the two classes of provisions convinces one immediately that, as far as the Act of 1834 was a cause of the subsequent reform, the provisions establishing central control exercised the more potent influence. No doubt the changes in the law relating to removal, settlement and illegitimacy had some effect. But to attribute a very large portion of the gain in administrative efficiency subsequent to 1834 to these causes seems unwarranted, especially when one is confronted with such direct testimony as I shall soon present. Some persons have made the mistake of attributing much of the improvement subsequent to 1834 to other causes, such as voluntary paid service and larger areas, but the story is only half told. What was it that rendered voluntary paid service any more efficient than the old compulsory unpaid service? The introduction of this change alone would simply have complicated the system by decreasing any direct responsibility that may have previously existed. The voluntary union of parishes might have been somewhat beneficial, but the evidence is not conclusive, for the Gilbert's unions are said to have been in worse condition than the parishes. It is hardly likely that voluntary action would have resulted in such suitable unions as an impartial authority would produce. Local prejudices or a desire to maintain local autonomy would have prevented the best results. Even when the Commissioners undertook to exercise their power of uniting parishes, some dissatisfaction was aroused, although every possible means was taken to prevent it.¹ Most of the economy which may be traced to the erection of workhouses by large areas would not have been secured

¹ Nicholls, *op. cit.*, ii, p. 308; Hansard, *op. cit.*, Vol. 23, p. 828.

without central supervision. Few parishes were large enough economically to build and operate a workhouse,¹ and others were too obstinate.

The student of legal systems is perhaps inclined to attribute reforms *attending* statutory changes wholly to these changes and to dismiss from consideration economic, social, moral, political or other forces. To forestall any objections upon this score, I would say that in the conclusions I have reached, I have not been unmindful of the fact that the present laborer is better able to meet industrial changes than the laborer of the eighteenth or even the first portion of the nineteenth century, and that consequently, *ceteris paribus*, pauperism would under any system of administration be less to-day than formerly. General intelligence, wider knowledge of economic and social laws, clearer perception of moral responsibilities, increasing political capacity would have tended to produce a similar result *without* the passage of new laws. While these facts do not explain the sudden decrease in pauperism immediately following 1834, they do to some slight extent explain why there is not now so much pauperism—at least the same kind of pauperism—as formerly. But there are so many tendencies in a contrary direction—the increasing complexity of our industrial system, misdirected humanitarian feelings, socialistic tendencies that I am very loath to admit that the balance is very largely in favor of the former.

It is often urged that the improved administration which so closely attended the passage of the Act of 1834 was mostly, at least largely, due to the great public interest aroused by the publication of the Report of the Poor Law Commission, the wide diffusion of the facts and the earnest

¹ Even in 1839 there were 37 unions, in which a majority of the guardians resisted the efforts made to induce them to build a workhouse. Nicholls, *op. cit.*, iii, p. 358.

desire to solve the problems. There is some truth in this view, but it is to be remembered that the public interest aroused was very largely due to the activity of the central board. The most evident result of the extreme centralization was the centering of responsibility as well as power in the Commissioners. This was immediately recognized, and the promulgation of correct ideas and principles was undertaken at once. The terms of the law were explained and orders issued to supplement it. Not alone were general principles laid down, but the details were minutely set forth, so that it was impossible for a local authority intentionally to go wrong. Nothing was left to the guardians to determine, except to whom relief should be given. This was a marked reaction from a system where the experience which guided the administration of relief was limited to the narrow bounds of a parish, usually to a year of compulsory service and to men lacking in education, experience, time and capability for framing rules and regulations.¹ The Commissioners acted as the collecting and distributing agency for the whole country, and the most effective measures were at the disposal of each locality without passing through the experimental stage itself. The educational influence of the Commissioners was a most marked one from the beginning and has continued to the present. Its importance as affecting the amount of pauperism is evident. It needs no amplification.

Efficient administration further was not brought about as easily as one might be led to believe from the preceding paragraphs. All local authorities were by no means eager and anxious to introduce the new methods and principles. Simply placing them in easy reach was not sufficient. Two classes of authorities were to be found besides those who were willing and able to bring about the desired reforms. One included those who were apathetic or antagonistic to

¹ *Report from His Majesty's Commissioners, etc.*, 1834 (Clowes & Sons), p. 282.

the new régime; the other, those who were willing and desirous of obtaining beneficial results, but who were deterred from taking the necessary steps through fear of public opinion, personal violence or destruction of property. The difficulties the Commissioners had to face in this direction were neither insignificant nor imaginary. Selfishness, local prejudices, the persistency of the old, firmly-rooted abuses were obstacles that existed everywhere. In some instances officers were elected for the express purpose of defeating the new law.¹ The struggle the Commissioners were obliged to make in 1839 to preserve their existence, when the results they had attained were so unanimously in their favor, shows the wide-spread opposition to an administration based on correct principles.²

The effect of central control might almost be predicted from the previous delineation of the powers of the Commissioners. There was no escape from their jurisdiction and obedience was necessary. The apathetic were aroused, and the antagonistic possessed but few avenues through which they could interfere with the execution of the laws and orders. The real work was in the hands of paid officers, who could be removed by the Commissioners if they did not perform their duties properly. As indifference and opposition decreased, the interference of the central government also decreased, until at present it is quite slight, especially when compared with the period immediately following 1834.

The system also had a very beneficial effect upon those authorities who were willing but timid. Previous to 1834 it was not an uncommon occurrence to find instances where relief was extorted by threats or even violence. If an overseer earnestly attempted to keep the rates within bounds

¹ Cf. Fowle, *op. cit.*, p. 103, *Edinburgh Rev.*, Vol. 74, p. 28; *Parish & Union*, p. 180.

² Fowle, p. 102 *et seq.*; Nicholls, ii, pp. 358 *et seq.*

and give aid only to the needy, he was in constant fear of having his property destroyed, his stacks burned or personal violence inflicted.¹ Such a state of affairs soon passed away. To complaints against the apparently severe provisions of the new administration, the local authorities replied that they were only acting under orders, that they had no discretionary power, but were obliged to enforce the orders and statutes as they existed.² If there was any fault to be found, the Commissioners were the persons to whom grievances should be addressed, but they were too distant, too difficult to approach. Hence, order reigned and reform prospered, where before there had been riots, incendiary burnings and intimidation. During the first two years under the new law there were a few riots because relief was given in bread and other necessities instead of money,³ because order and discipline were introduced into workhouses and because the minds of the poorer classes had been aroused by falsehoods,⁴ but after 1836 no mention is made in the Reports of any further trouble of this character. Resistance was found to be fruitless. That there would have been others had it not been for the central authority, was the testimony of the Commissioners and is a natural conclusion from the conditions previous to 1834.⁵ Such radical transformations if introduced without any provision for enforcement by the central government would have arrayed one class against another with disastrous results, or what is more probable, would have rendered the act nugatory like all former acts.

¹ Cf. *Abstracts*, 1833, pp. 27, 136-138; Fowle, pp. 77 *et seq.*

² Cf. *Parish & Union*, pp. 181-2; Nicholls, *op. cit.*, ii, pp. 329, 361.

³ 1st Rep. of P. L. C., 1835 (W. Clowes & Sons, London), pp. 62-3. The references to the first ten reports of the P. L. C. are made to the edition published by W. Clowes & Son, but can be easily verified by consultation of the reports printed in the S. P.

⁴ 2d Report of P. L. C., 1836, p. 4.

⁵ 1st Report of P. L. C., 1835, p. 63.

Flexibility is another characteristic of the system of central control. The opinion was frequently expressed, when the reform of the poor laws was being considered, that the smallest details ought to be unalterably fixed by Parliament, but it was soon recognized that this would be impossible.¹ In times of great industrial activity when labor is in large demand and food abundant, relief is not often requested. When a revulsion of trade comes, when manufacturers decrease the number of laborers employed, when the price of food rises, and is perhaps accompanied by an epidemic, a system capable of expansion is needed. Methods before sufficient now become inadequate. Regulations once suitable now work great injury. Temporary measures for relief must be provided, and if the system does not admit of adaptation to circumstances it is a failure. When return is made to normal conditions, the temporary measures must again give way to former methods. Then again, the varying industrial and social conditions of different sections of the country render a fixed plan impracticable. Discretionary power must be lodged somewhere. Experience had demonstrated that the local authorities were incapable of its proper exercise. Legislative control had also been proven worthless by the woeful state of parishes under local acts. A central administrative authority seemed the only alternative, and the wide powers of regulation apparently provided the means whereby alterations could be made to suit the requirements.

The first severe test came in 1836-7, when all the unfavorable conditions just mentioned existed.² The case of Nottinghamshire well illustrates the mode of operation.³ When it became evident in the spring of 1837 that a large

¹ Report from H. M. Com., 1832-4, *op. cit.*, p. 294.

² Nicholls, *op. cit.*, ii, p. 344.

³ Cf. 3d Rep. of P. L. C., 1837, pp. 11, 12; also 4th Rep., 1838, pp. 35-8.

number of laborers would be forced to apply for relief, the Poor Law Commissioners directed one of their assistant commissioners to keep them constantly informed as to the needs of the union and to give all the aid and assistance possible. When it became known that former rules must either be broken, suspended or great suffering inflicted, the Commissioners temporarily suspended certain rules and gave many suggestions by means of which the distress was tided over. The same experience has been passed through time and time again. Nearly every commercial crisis shows the many benefits of such an expansive system. Admirers of extreme local self government might assert that under a general law with strict provisions, the statute might be left unenforced during extreme periods of distress; but such a course is extremely dangerous, for who is to determine when the period begins and ends? There are too many forces already that tend to make relief too easily obtained.

But central supervision did more. Prior to 1834, when all changes in the poor law had to be made by general or local acts of Parliament, abuses would exist for a long time before being remedied, if remedied they ever were. No authority existed whose duty it was to discover defects and see that they received proper treatment. The only practical avenue of approach to Parliament was through a member of the House of Commons, who, when he thought it worth the struggle, would either introduce a local bill and try to get it passed, or attempt to have the Government formulate a bill. Perhaps, if the needs were urgent and manifest, a general bill would be brought forward, but this was frequently not done until after a committee had been appointed to investigate and report. Long delays were the consequence, a general law was apt to be unfitted to many localities, and local acts only produced complications rendering a general and effective reform more difficult to obtain.

By the institution of a central authority with subordinate officers constantly in touch with the people and their local authorities, the need of legislation was at once perceived. No special commission need be appointed, for here was a permanent one making a continuous investigation, and with more practical knowledge and experience than a special one could possibly possess. The many beneficial effects of such a plan are illustrated by its practical workings in 1860-1863. The depression of trade, the long and severe winter of 1860-1 increased greatly the applications for assistance.¹ The great cotton famine of 1862 added to the distress, until it became evident that even the power of the Poor Law Board was insufficient to give the proper remedy. Consequently the President of the Board introduced a special, not a local, bill² into Parliament July 22nd,³ which was passed in a modified form August 4th,⁴ giving the needed relief.⁵ How quickly was the remedy applied! If we can judge how the question would have been solved without a central authority, from the manner in which other similar problems had been previous to 1834, months would have passed before a bill would have been enacted, with the probability that it would not have been in many respects suited to the needs of the occasion. The impress of the system may be seen upon all the legislation relating to poor relief. It is a fact that is usually overlooked, but much of the success of statutory enactments has been due to the existence of the central Board with its wide experience, extensive knowledge and

¹ In London alone the number reached 130,317, an increase of 38,367, within five weeks. *Vide* Aschrott, *The English Poor Law System*, p. 66.

² The adjective "local" is used in England to signify very *nearly* the same kind of a bill as is "special" or "private" with us.

³ Hansard, *op. cit.*, Vol. 168, p. 682.

⁴ 25 & 26 V., c. 110.

⁵ *Cf.* Rep. P. L. B., S. P., 1861, Vol. 28, pp. 14-25; *Ibid.*, 1862, Vol. 24, pp. 16-18; *Ibid.*, 1863, Vol. 22, pp. 13-17.

invaluable aid in the formation and consideration of various bills.

Another result of the centralization of discretionary power was that fewer men of superior ability were needed, that the requirements of local officials were less exacting, and that consequently a wise and efficient administration was more easily obtainable. It was possible, previous to 1834, to reduce pauperism to a minimum, as the instances of Southwell, Bingham and Cookham show, but the results in these parishes were brought about by the untiring efforts of exceptional men. If each parish had possessed a Lowe, a Litchfield, or a Nicholls, the reform of the poor law would not have been made necessary, for the abuses would not have existed. But one such man in each parish was the very least that would suffice,¹ and 15,000 such were not to be secured.² The men of high intelligence, remarkable firmness and great activity, which this field of local government demanded were not numerous, and it was a difficult matter to persuade those who had the capability to undertake the task.

The requirements of the régime subsequent to 1834 were more moderate. The demand was not for men of such remarkable ability, activity and firmness, but for men—not less in number than heretofore—who were honest, who possessed an average amount of intelligence and determination, and who were willing to sacrifice a comparatively small amount of time. For members of the central Board, a few individuals of exceptional attainments were required. Assistant commissioners—called inspectors after 1847³—medical officers and other subordinate officials needed less extensive qualifications. The change was brought about by the trans-

¹ Other instances of the influence of a single person can be found on pages 14, 38, 105, 112, 147, 164, 369 of the Rep. from the P. L. Com., 1832-4, *op. cit.*

² The number of parishes was about 15,000.

³ *Vide*, 10-11 Vict., c. 109, ss. 19-22.

fer of powers from the parish, vestry and union authorities to the central board created by the Poor Law Amendment Act. That the centralization went so far as to produce other effects injurious to local self-government cannot be denied, but it is undisputed that more efficient administration was produced.

Just as a prominent characteristic of the state of affairs prior to the enactment of the reform measure was an entire lack of anything approaching uniformity, so subsequent to that date, a nearer and nearer approach to uniform conditions was a noticeable feature. The natural result of a system where such large discretionary powers were entrusted to local authorities possessing little determination, knowledge, experience and capability was the greatest variety of methods and practices. It could not be otherwise when no superior administrative authority existed. It was just as natural that, when the same power of making rules and regulations that had been exercised by over 15,000 unskilled, and for all practical purposes, irresponsible authorities, biased by sinister interests, should be confined to one central board of control, uniformity should follow. Of course absolute uniformity was and is still an impossibility. Different conditions demand different treatment, and the Poor Law Commissioners recognized this, but as the reform progressed similarities appeared and the same methods and principles were introduced. It is true that as administration becomes more efficient, uniformity must follow in certain lines. But uniformity in method is different from uniformity in results. However, central control tended to produce both.

Conditions prior to 1834 were chaotic. Methods of keeping accounts were determined by each parish overseer or the person to whom he delegated the task,¹ with the result that no two agreed.² One used well-bound books, another

¹ Fowle, *op. cit.*, pp. 77-8. ² *Abstract*, P. L. Com., 1833, pp. 107, 138, 168, 179.

loose slips of paper with an old pair of boots as a receptacle.¹ Vestries were not obliged to render accounts.² Methods of auditing were still worse. In some districts the expenditure of every shilling was scrutinized,³ while in others an audit took place once in eleven years. A few overseers were unable to read, and by their side one sees the name of Sir George Nicholls,⁴ who instigated and put into successful operation so many reforms.⁵ Out-door relief was freely granted in some parishes, while others strictly applied the workhouse test. Cholesbury, an agricultural parish in Buckinghamshire, had in 1833 a total population of 139, of which only thirty-five were not dependent upon it or other parishes for support. Of the remaining 104, sixty-six received during the year a total of £367 4s, and the average member of the non-pauper class contributed nearly £10½. The other thirty-eight of the population received aid from other parishes in which they had a settlement. The cultivation of all lands, except sixteen acres, was abandoned, the rates having more than swallowed the rent. The inhabitants were deteriorating morally and physically, as well as industrially. They had become idle, dishonest, immoral, and all hope of gaining an independent existence had fled.⁶

With this dismal picture compare Southwell, a parish near the center of Nottinghamshire, which had a population of 3,384 in 1831. During the year 1832-3, only £605 14s. were expended in relief of the poor, equivalent to a rate of nearly 3s. per capita. Pauperism was made uninviting by the rigid application of the workhouse test. Allowances and payments of rents were unknown, and none were exempted from the payment of rates. The result was a happy, thrifty, in-

¹ Rep. of P. L. Com., 1832-4, pp. 99, 187.

² Fowle, *op. cit.*, p. 78.

³ 1st Rep. P. L. C., 1835, p. 175.

⁴ *Abstract*, p. 286.

⁵ Nicholls, *op. cit.*, ii, pp. 243-251.

⁶ Rep. of P. L. Com., 1832-4, pp. 87-95.

dustrious class of laborers.¹ These two cases are not isolated examples. Many others could be given illustrating both extremes, with poor rates varying from 63s. to 2s. 4d. per capita.

Central control at once began to produce uniformity, and although the transformation was not sudden, it soon became apparent. Opposition to the new law, the many local acts remaining unrepealed, and the widespread abuses retarded the movement. In 1844, the rates in counties varied from 3s. 11d. to 10s. 6d.²

7 Counties paid from 9 to 10 shillings.

5	"	"	"	8 to 9	"
7	"	"	"	7 to 8	"
6	"	"	"	6 to 7	"
8	"	"	"	5 to 6	"
6	"	"	"	4 to 5	"
1	"	"	"	3 to 4	"

In 1894, the rates in union-counties varied from 13s. 6d. (London) to 4s. 2d.; and if London be excepted, which is peculiarly situated, the higher limit becomes 7s. 11d.³ Of the 45 union-counties,

1	paid	13s. 6d.
6	"	from 7 to 8 shillings.
16	"	6 to 7 "
11	"	5 to 6 "
11	"	4 to 5 "

The same increase in uniformity might be shown as regards the number of paupers and per capita expenditure, but all these illustrate uniformity in results, not in methods, and no one questions the statement that great uniformity has appeared in this particular.

Further, a definite form of keeping accounts was substi-

¹ Nicholls, *op. cit.*, ii, pp. 243-251. ² 11th Rep. of P. L. C., 1845, pp. 260-1.

³ 25th Rep. of L. G. B., 1895-6, pp. 448-9, App.

tuted for the previous chaotic conditions. The ledger titles, the number and kinds of books, the manner in which accounts were debited and credited, the precise form of all reports and legal papers were specified.¹ A uniform and effective system of audit was later established. The methods of administering relief were brought into harmony. No longer could it be said that blind prodigality ruled one parish or union and that the workhouse test reduced pauperism to a minimum in adjoining parishes. One union became as desirable as another, and thus labor was permitted to seek the point of greatest need. Aid became as difficult to obtain in one place as another, and the vivid description of unequal conditions which Lord Brougham gave became no longer applicable.

The importance of uniformity can hardly be overestimated. Legislation is made easier, for general acts are much more effective when no dissimilarities exist in the subjects to be dealt with. The dangers from local acts inadequately considered are removed, for their number is greatly diminished. And no locality is forced to bear a disproportionate burden.

Akin to uniformity is continuity, and the same forces that have tended to produce the former have brought about the latter. As has been seen, an efficient system might have been secured prior to 1834 through the persistent efforts of some individuals, but neither legal provisions nor public sentiment tended to perpetuate it. On the contrary, the spirit of the time seemed to declare that one set of officers was free to do as it pleased, no matter what success had been attained.² Even the short illness of an overseer was sufficient to cause a relapse.³ The retirement of a workhouse-keeper

¹ 1st Rep. of P. L. C., 1835, pp. 76-8, 87-9, 106-165. See also Macmorran and Lushington, *op. cit.*

² Rep. of P. L. Com., 1832-4, p. 283.

³ *Ibid.*, 282-3.

or a vestryman was followed by an immediate return to former methods.¹ Experience was limited to the narrow bounds of a parish and usually to one year of compulsory service,² and when persons who had been successful in producing reform retired, the parish relapsed into pauperism.

The establishment of a central board altered all this. The members of the Board have changed, but the tenure of subordinate officers has been co-extensive with efficient service, and the infrequent changes that have been made in the Board have produced no changes in principles, and only when experience has proven certain plans unsuccessful or others more fruitful, have alterations been made. This is partially the result of transferring most of the discretionary powers to the central authority, with the accompanying result that less depended upon the local officers, but it is also due to the *esprit de corps* of the department.

The system that does not provide for some change is absolutely useless. Progress implies change. Experience is constantly substituting new methods for the old. But alteration is not necessarily reform, neither is innovation progress. Both extremes are equally dangerous. While the Board has avoided becoming stereotyped, it has also escaped the charge of making ill-considered alterations; and while it has perpetuated efficient administration, it has not fallen into the errors to be found in either extreme.

What importance should be attached to all these factors? What portion of the reform in the administration of poor relief can be said to be due to central supervision? Increased intelligence which rendered the laborer better able to withstand industrial changes, to alter his occupation as his interests demanded, was of some importance, but we shall see in a subsequent chapter that central supervision has been a

¹ *Abstract*, 1833, pp. 14, 38.

² Rep. of P. L. Com., 1832-4, p. 283.

most prominent factor in increasing education. Improved sanitary conditions have undoubtedly lessened pauperism slightly, but here also central control has exerted a most effective influence. Expenditures have been kept down by the control over loans and central audit, but in these cases it is central supervision that has played the leading role. Parliamentary investigations and public discussions have contributed somewhat. The alterations made in the law which were distinctively outside of the plan of central control were more important, but their effectiveness cannot be measured except in connection with central control, for without it they would have accomplished little. To conclude then, it must be said that by far the greater influence in maintaining the past efficient administration has been central administrative supervision. It has been the keystone to the arch, and no one can thoroughly comprehend the causes of the reform since 1834 without giving it the most prominent position.

The present position of central supervision in maintaining efficiency is a different problem. Its utility as a means of disseminating information and successful methods is somewhat diminished as compared with earlier years, for the ignorance then combated no longer exists. Correct principles regarding the administering of relief are much more commonly held, but I doubt if the central board could be done away with even now without causing a great loss and materially impairing the efficiency of administration. The large amount of information annually issued is still quite valuable.

The power of the board to compel local authorities to enforce the law and perform their duties operates more through its possible than its actual exercise. The cases of actual interference are comparatively few, but these serve to keep the local authorities up to the mark. Opposition has enor-

mously decreased and beneficial results are sought not merely because of the compulsory power of the Board, but because there is an earnest desire to obtain the results. One would hardly, however, be justified in saying central control has no influence. It is diminished and changed in character but could hardly be done away with. The same is largely true regarding the transference of responsibility from local to central authorities. The intimidation existing in former years is wanting, but as against the importuning of paupers and misdirected humanitarianism, it is still a check. There is no class of local officers upon whom such strong forces are brought to bear as upon those who grant relief, and much determination is required to withhold it except in the proper instances. But since the local officers have powers mostly of a ministerial character, and since the Board is too distant and difficult of approach, there is not the tendency nor liability to yield to local demands. Here again we see the influence through possible interference increasing, and actual interference decreasing.

The benefits arising from the flexibility of the system and from the existence of a permanent board to suggest and direct legislation, seem almost as great as ever. The increasing complexity of our industrial and commercial system renders crises more frequent and disastrous. It is all the more necessary, therefore, that there be a system of great flexibility, able to expand in times of need and to contract in times of prosperity. Otherwise there would be much unnecessary suffering or a pauperized class. There is not the need for legislation at present that there has been in past periods, but the system is by no means perfect, and the prevention of legislative tinkering is often as valuable as actual legislation. In these two respects, therefore, the influence of central supervision is almost as great as before.

As has been said, erroneous principles are not as current

as formerly and the personal efficiency of local officials has greatly increased. The result is that the minute supervision of the Board is no longer necessary, and beneficial results which were attributed to central control as productive of uniformity and continuity, must now be attributed to some extent to these facts. Yet one seems hardly justified in concluding that the same uniformity and continuity would continue to exist were central control to be removed. If one may judge from the past and from other countries, it seems probable that uniformity would greatly decrease, and that methods and plans would change with each new set of local officers. The same conditions that existed prior to 1834 would not return, but the loss would be great, and there is no field in which uniformity and continuity are so needed as in poor relief. Their absence brings dire results.

It is not to be inferred that the abolition of central supervision would pauperize the country, or that it is the *only* cause of present efficiency. There are other important causes and they have often been noted. But it does seem probable that if the present system should be completely decentralized and all discretionary power re-transferred to local authorities, pauperism would ultimately greatly increase, rates rise, and the greatest divergencies appear, bringing results hardly commensurate with the little benefit that might be derived from purely local self-government. Some decentralization might with safety be introduced, but any change in this direction must be moderate and well considered. Experiments are too costly which involve the efficiency of the present system.

CHAPTER III

PUBLIC HEALTH AND LOCAL GOVERNMENT

* I. *History*

IT may at first glance seem somewhat illogical to discuss Public Health and Local Government in the same chapter, but the reasons will become evident. To presage some of the facts to be shown later, let me say that the term "Public Health" includes very much more in England than in the United States. It is true that the health departments of our cities have extremely large powers, but they do not begin to embrace the wide field that is reached by the Public Health Acts in England. One may almost say that more of the subjects usually included under "local government" are dealt with in these Acts than in all other acts combined. The term "Local Government" is used in this chapter only in a restrictive sense, as including those various activities that belong neither to poor relief, police, education or public health. I shall not attempt to discuss every subject nor every phase of central control. The provisions are too numerous and too varied. I shall only try to give the most important, the most representative and the most general. Where a general rule has been followed I shall try to discover it.

The reason "Public Health" has received such a wide interpretation is probably due to the fact that when in 1848 the sanitary condition of the country had proved that a reform must be undertaken, it was begun with the idea in mind that the improvement of public health was the ultimate

object, and that other things must bend to this end. Then as time went on and population collected about commercial centers, new demands were made upon the local authorities; private enterprise could no longer be exclusively or even mainly depended upon, and public control became necessary. The success of the sanitary authorities and the similarity of their functions to new activities about to be authorized, although rather slight in some instances, caused Parliament to confer new powers upon these authorities and often through Public Health Acts. Thus it is impossible to separate the functions which have to do with public health from other activities, but both classes must be discussed jointly. It was not until 1894 that the complexity of functions and the growing importance of activities not intimately associated with public health became so universally recognized that the names of the local authorities were changed from urban and rural *sanitary authorities* to urban and rural *district councils*.¹

I have followed in this chapter a more or less chronological treatment, because the development of the system has been entirely lacking in uniformity. The pendulum has oscillated between local government pure and simple, and extreme centralization. At various periods different schemes have been tried, but not until the eighth decade was a logical, systematic and permanent plan evolved. The earlier attempts are instructive, however, as they point out the mistakes to be avoided and the inevitable tendency towards central control.

The care of the dependent classes is a question that has been prominently before the public mind for centuries, and had had a long history when the successful reform described in the preceding chapter was begun in 1834. Sanitary problems on the contrary did not become burning questions

¹ 56 & 57 V., c. 73, s. 21-25. See also 51 & 52 V., c. 41, s. 100.

until the modern industrial era had introduced the factory system and the growth of large cities had begun. Previously, the individual had been depended upon to guard his own interests, and with fairly good results. No civilized state had wholly neglected to provide for the protection of the health of its citizens, but very little had been done, and private initiative was the fundamental principle. Even after the problems had increased in importance and their solution become much more difficult, the same principles of governmental action were retained, and not until the fifth decade was a definite attempt made to provide for governmental action in an extended form.

These facts should not be forgotten, for they explain why a more successful scheme was not framed in 1848. The reformers of the poor law had centuries of experience from which to draw. Nearly every plan of private and governmental action had been tried. The defects had been plainly pointed out by experiments and the needs of the system were evident. The principles upon which relief should be given had been decided. All that remained was to establish a proper system of administration. But in the following decade when sanitary conditions had fallen into such a woe-ful state, long experience was wanting, the problems were new, and no part of the plan of reform could be considered as settled. The only thing that could possibly have been regarded as proven, was that a system depending upon private initiative entirely would not be successful, but the English were not even ready to believe this true. A little more experimentation was needed. The relation of the central government to the local government had not been worked out, nor that between the local authorities and private persons. Medical science had not made the invaluable contributions that have since made the warfare against disease so much easier. Mechanical and civil engineering was very largely

in an experimental stage, and modern methods were entirely unknown. Is it surprising then that as beneficial results did not attend the first legislative attempts in the field of public health as followed the Poor Law Amendment Act?

The system in existence previous to 1848 can be described in few words. By common law, the justices of the peace had power to remove and suppress nuisances on the complaint of private individuals, and in the country districts their intervention produced quite good results, but in urban centers it was valueless.¹ Everywhere it was a purely remedial plan and negative rather than positive in its results. The fear of punishment acted only very slightly as a deterrent and was entirely useless as an incentive to activity.² No solution was to be found in this plan.

Another method was through local acts. If a locality, usually quite thickly populated, wished to obtain powers relating to sewers; to the maintenance, paving, cleansing, lighting or policing of streets; to the maintenance of cemeteries, markets, fairs or abattoirs; to the extinction of fires, or other kindred purposes, it applied to Parliament for a special act granting its request.³ The powers were usually conferred upon an elective commission or the town council. In 1847 the provisions usually found in these local acts were consolidated into two acts, to provide more similarity and to facilitate enactment.⁴

Three important investigations were made, one in 1840,⁵

¹ Arminjon, *op. cit.*, p. 85.

² *Ibid.*, p. 314.

³ Between 1801 and 1865, 470 improvement acts were passed relating to various districts of the Metropolis. Liverpool was governed in 1846 by sixty local acts, at which time a code was secured consolidating them. Clifford, *Private Bill Legislation*, ii, pp. 333-4.

⁴ Improvement Clauses Acts, 10 & 11 V., c. 89. Commissioners Clauses Acts, 10 & 11 V., c. 90.

⁵ Report from the Select Committee on the Health of Towns, S. P., 1840, Vol. 11.

one in 1843,¹ and one in 1844 and 1845,² of the conditions existing under the *regime* of local self-government pure and simple. Their results have been summarized as follows:

“Out of fifty towns visited on behalf of the commissioners, the drainage was reported as bad in forty-three, the cleansing in forty-two, the water supply in thirty-two. In Liverpool 40,000 and in Manchester 15,000 of the working class lived in cellars, ‘dark, damp, dirty and ill-ventilated;’ Nottingham contained 11,000 houses, of which 8,000 were built back to back and side to side, so that ventilation was impossible; * * * even in Birmingham, then, as now, a model town, the water supplied to some of the poorer districts is described as being ‘as green as a leek.’ The results of this state of things were clearly seen. Whilst the death-rate in country districts was 18.2 per thousand, in towns it was 26.2, in Birmingham and Leeds it was 27.2, in Bristol 30.9, in Manchester 33.7, in Liverpool 34.8. * * * The average age at death in Rutland and Wiltshire was 36½ years, whilst in Leeds it was 21, in Manchester 20, in Liverpool 17.³

“The various forms of epidemic, endemic and other disease, caused or aggravated or propagated chiefly amongst the laboring classes by atmospheric impurities produced by decomposing animal or vegetable substances, by damp and filth and close and over-crowded dwellings, prevail amongst the population in every part of the kingdom, whether dwelling in separate houses, in rural villages, in small towns or in the large towns, as they have been found to prevail in the lowest districts of the Metropolis.

“Such disease, wherever its attacks are frequent, is always

¹ Report on the Sanitary Condition of the Laboring Population of Great Britain, S. P., 1843, Vol. 12.

² Reports of the Commissioners for Inquiring into the State of Large Towns and Populous Districts, S. P., 1844, Vol. 17; S. P., 1845, Vol. 18.

³ *Edinburgh Rev.*, Vol. 173, 1891, p. 69.

found in connection with the physical circumstances above specified, and that where those circumstances are removed by drainage, proper cleansing, better ventilation, and other means of diminishing atmospheric impurity, the frequency and intensity of such disease are abated; and where the removal of the noxious agencies appears to be complete, such disease almost entirely disappears. * * *

"The expenses of local public works are in general unequally and unfairly assessed, oppressively and economically collected by separate collections, wastefully expended in separate and inefficient operations by unskilled and practically irresponsible officers.¹

"The utter failure of the system of local self-government for sanitary purposes is notorious to all who have taken any pains to inquire into the subject."²

The commissions reporting in 1840 and 1845 recommended a plan of strong central supervision and control, making provision for a central board having power to investigate, issue rules, approve appointment of local officers and to act itself in case the local authority refused to act or acted improperly,³ but this recommendation was not accepted until 1848.⁴ It had been recognized for some years that the great difficulties to be overcome were the apathy of the people, local selfishness,⁵ and the great expense that would fall upon the property owners, who had only a very limited interest in better sanitation;⁶ but it needed the fear of a cholera epidemic to turn the balance in favor of a strong central control.⁷

¹ Richardson, *The Health of Nations*, i., pp. 150-2.

² *Fraser's Magazine*, Vol. 36, 1847, p. 371.

³ S. P., 1840, Vol. 11; also 1845, Vol. 18, pp. 20, 21 especially.

⁴ A bill was introduced in 1845, but was not passed.

⁵ *Fraser's Magazine*, Vol. 36, pp. 368, 376.

⁶ S. P., 1843, Vol. 17, p. XII.

⁷ Hansard, *op. cit.*, Vol. 224, p. 638.

The Act of 1848 created a General Board of Health, consisting of one *ex officio* member—the First Commissioner of Works—and two other persons appointed by the Crown.¹ Power was granted to appoint and remove “so many proper persons as they, subject to the approval of the Commissioners of Her Majesty’s Treasury, may deem necessary,” and to fix their salaries. The Treasury also fixed the salary of one of the members of the Board, other than the President.² Upon the receipt of a petition signed by one-tenth of the persons rated for the relief of the poor in any locality having a known or defined boundary containing not less than thirty inhabitants; or when it should appear that the average death-rate for a period of not less than seven years, as ascertained from the returns of the Registrar General, exceeded twenty-three per one thousand inhabitants, the General Board was empowered, if it chose, to direct a minute inquiry to be made into the sanitary conditions of the place, the local acts in force and all other matters upon which it wished information.³ The Board could then, in case a petition had been received, report to Her Majesty what part of the Act or all of it should be put into operation. Action was to be taken through an Order in Council, but this came to be little more than a matter of form, for the recommendations were invariably accepted. This method was adopted to avoid the great expense of local acts. If no petition had been presented, or if a local act was to be altered, a provisional order confirmed by Parliament was necessary.⁴ But here again the decision of the Board was almost final, for the presentation of an order for confirmation was almost always followed by its enact-

¹ 11 & 12 V., c. 63, s. 4. An additional member was added in 1850, and the Board was entirely reconstructed in 1854. See 13 & 14 V., c. 52, s. 2.

² 11 & 12 V., c. 63, s. 4-7. Salary was not to exceed £3 3 s. and expenses per each day actually employed.

³ *Ibid.*, s. 8.

⁴ *Ibid.*, s. 10.

ment. In its formation, however, the possibility of refusal of confirmation did exert a restrictive influence to some degree.

Over the subordinate officers of local authorities, the Board did not have the large power possessed by the Poor Law Board. In case of the removal of the surveyor, whose duties mainly consisted in seeing that drains, sewers and ditches were kept in proper condition,¹ its approval was required. A medical practitioner was to be appointed as officer of health, whose duties were fixed by the Board; and where localities united to elect a single officer, his salary was fixed in the same manner. His removal was subject to the same conditions as that of the surveyor.² The approval of the Board was required to legalize the contracts of local boards to lease, hire, construct, purchase or maintain water-works³ and to legalize the mortgaging of rates.⁴ If persons felt aggrieved by the proceedings of the local board as to the recovery of certain expenses, they might appeal to the General Board, which could issue an order deciding the appeal.⁵ It could also restrict or prohibit the interment of bodies in a burial ground that it deemed a menace to public health.⁶ Every by-law imposing a penalty passed by a local sanitary authority had to be approved by the Secretary of State,⁷ an anomaly which was probably due to the fact that by-laws passed by borough councils had to be submitted to the Secretary of State.⁸ It might have been expected that they would have been sent to the General Board of Health.

The duty of enforcing the law was vested in the local boards whose powers and duties extended to the construction, maintenance and discontinuance of sewers; to the cleansing, paving and regulation of streets and highways (with certain exceptions in the latter instance); to the en-

¹ 11 & 12 V., c. 63, s. 54.

² *Ibid.*, 37, 40.

³ *Ibid.*, 75.

⁴ *Ibid.*, 119.

⁵ *Ibid.*, 120.

⁶ *Ibid.*, 82.

⁷ *Ibid.*, 115

⁸ 5 & 6 Wm. IV., c. 76, s. 90.

forcement of laws relating to drains, wells, outhouses, nuisances, abattoirs, lodging houses, cellars and interment of the dead; to the proper supply of water; to the purchase of property to carry out the above purposes; in short, all those powers and duties previously conferred upon localities by local acts.

Although the General Board of Health remained in existence ten years, it was only during the first five years that its activity was untrammelled. After 1853, which should have been the busiest period, less than one-fourth of the provisional orders and orders in council were issued and confirmed that were issued and confirmed during the whole ten years.¹ This is partially accounted for by the precarious existence of the Board, caused by the renewal of the Act of 1848 year by year after the five years for which it was first enacted had expired.² And this in turn was due to the opposition the Board had aroused in its first few years of existence. But the real explanation is to be found in the apparently unimportant changes made in 1854 and the conditions that led up to them.

When the General Board of Health was established in 1848, Mr. Chadwick was made its president. He had been intimately connected with the administration of the poor laws, and had become strongly infused with the idea of central control, which, as we have seen, made the Poor Law Board so powerful. Transferred to the department of health, he carried with him the belief that to secure the best results the same system must be adopted here. Parliament had not given the Board the same extended powers it had bestowed

¹ The exact figures were :	10 years.	after 1853.
Provisional orders confirmed.....	113	27
Orders in council confirmed.....	109	21
<i>Vide Reports of Gen. Board of Health.</i>		

² 11 & 12 V., 63, s. 4.

upon the Poor Law Commissioners, and the people were prepared for only a moderate exercise of the powers granted. Firm in its opposition to unsanitary conditions, the new Board (that is, its president) set out to accomplish reform by establishing an exceedingly centralized system. At the time of the reconstruction of the Board in 1854, Mr. Chadwick was legislated out of office. An understanding of the causes of this action will explain why central control received such a set-back in 1854 and 1858.

It is a principle now commonly recognized in English government, that administrative departments should be represented in Parliament by a responsible minister. The non-observance of this rule in the case of the General Board of Health contributed to the growing opposition to the Board. No official was present to answer questions or refute false charges, and the truth suffered.¹ Another mistake was the withholding of the power to appoint permanently skilled inspectors for the various local inquiries. The consequence was that animosity was soon aroused between the Board and most of the civil engineers. Being unable to engage persons permanently, it was obliged to permit them to engage in private business also. Thus the same person was a government officer and a private individual competing for the privilege of constructing the works. A feeling of injustice was inevitable.

But more opposition was aroused by the use made of the power to put the Act into operation where the death-rate had exceeded twenty-three per one thousand for seven years, and the locality opposed it. Such action was liable to arouse opposition in the locality, and yet it was not sufficient to assure efficient administration. In the first place, seven years was too long a period, especially when the high death-rate is considered. Then the measures provided were rem-

¹The same difficulty arose in the case of the Poor Law Commissioners.

edial rather than preventive, and it is always more difficult to combat disease after it has once got a foothold than to prevent the conditions which make its ravages possible. But the gravest defect in the system was the failure to provide any means whereby the central authority could compel the execution of the law when once adopted.¹ It might be compulsorily applied, but not enforced, and the local authorities could do almost as they pleased. The same is largely true concerning the other methods of applying the law. One-tenth—the proportion of the ratepayers required to sign a petition for an inquiry—is a small proportion, but considering the strength of the forces working against sanitary reform, considering that the expense of the inquiry had to be borne by the locality, and that the provisional order *might* be fought in Parliament if too much opposition was aroused, it is seen that even so small a proportion was a considerable limitation.² But even if the law were applied, there was no way to enforce it. As one-tenth is far from a majority, enactment upon petition did not assure its execution.

The policy of the Board naturally and necessarily came in conflict with the interests and opinions of private individuals, owing to the nature of the reforms to be secured. The Board itself was charged with trying to extend the field of government and to limit private activity. The amelioration of evils and the construction of works to prevent unsanitary conditions necessitated greatly increased expenditures, which a large portion of the property holders vigorously opposed. To counterbalance all these defects and the opposition man-

¹ The great defect in former laws had been the lack of an authority to compel adoption and enforcement. See Hansard, *op. cit.*, Vol. 98, p. 734.

² The one-tenth limit was introduced as a compromise between those who wished to give the Board large coercive power, and those favoring extreme local self-government. See Hansard, *op. cit.*, Vol. 98, p. 874.

ifested, the Board could point to no extraordinary increase in efficiency throughout the country as a whole, as did the Poor Law Commissioners when they were censured. The Act of 1848 had at the same time gone too far and not far enough. The power of the Board was not sufficiently extensive to overcome local opposition, indifference and selfishness, and to compel enforcement, but was sufficiently large to arouse antagonism and produce its repeal.

The attack made in 1854 was waged partially against Mr. Chadwick and partially against the system of central control. It succeeded in retiring him from the presidency of the Board, and four years later in making important changes in the law. No doubt the disrepute into which the system fell was due to Mr. Chadwick's failure to perceive that reforms in Anglo-Saxon countries must be brought about by slow stages and steady growth, and his lack of patience in obtaining the desired results. The other defects in the law, however, would have necessitated extended alterations sooner or later. But before passing to the legislation of 1858, it is necessary to ascertain what the General Board of Health accomplished.

A Parliamentary Report states that by June 20, 1857, one hundred and seventy-five places had become subject to the Act of 1848, either in part or *in toto*, having a population—in 1851—of 2,300,000.¹ Suppose this number had increased to 2,500,000 by the time the Act was repealed, does it compare very favorably with the whole population of England, which was 18,000,000 in 1851? The number of local acts altered during the ten years was fifteen. Only 113 provisional orders were confirmed and 109 orders in council issued.² Up to March 31, 1853, in only twenty-eight places

¹ S. P., 1857, Vol. 41, pp. 3-19, 2d session. *The British Almanac and Companion*, 1859, p. 43, says 236 towns had become subject to it in 1858, but no exact statistics as to population are given.

² See Annual Reports of the General Board of Health.

had the Board directed inquiries to be held when no petition had been presented, and where the death-rate had exceeded twenty-three per one thousand upon an average in the seven preceding years. In only half of these had the Act been put in force by provisional order.¹ One needs only to consult the reports of the Registrar General to be convinced that these were only a fragment of the places having higher death-rates than twenty-three per thousand.

Consulting the mortality tables, it is found that for the period, 1838-1848, the average annual death-rate was 22.23 per 1000; for 1849-1857, it was 22.39 per 1000. If we allow for the increase in the death-rate which would have accompanied the growth of cities and populous places unless sanitary conditions improved, the conclusion is reached that the slight increase was in reality a hopeful sign. Had not local authorities been doing more to solve the problems after 1848 than before, the increase would have been much larger, especially when it is remembered that there were two cholera epidemics within the latter period. How much the Act of 1848 contributed towards keeping the death-rate down is a difficult question to answer. Directly its influence was not great, as it was in force in not more than one-seventh of the country. But if the General Board of Health did not accomplish much directly, indirectly it performed valuable service. Information was gathered and disseminated, experiments made and their results published, and the public aroused to a realization of its duties and responsibilities. The results of the earlier Parliamentary Commissions would probably soon have been lost, had not the Board kept the matter before the public eye. Although the reforms were somewhat too rapidly introduced, something had been accomplished. The discussion aroused had a healthful and invigorating influence, and greatly aided in impressing the

¹ S. P. (704), 1852-3, Vol. 96.

importance of sanitary problems and showing the great need of reform. The relation of the government to the individual was becoming more evident, and the way was being paved for more lasting and successful reforms.

It may seem a little surprising that central control should be frowned upon in the field of public health but viewed with much favor in poor law administration; but after considering the defects of the first attempt in the former field, it is not so surprising. Another factor which assists in explaining this apparent incongruity and also accounts to a certain extent for the differences of the present systems, is the difference in the very nature of the two fields. The efficient administration of the poor laws in 1834 was inseparably connected with decreased expenditure, and the present problem is not how to prevent parsimony, but blind prodigality; not how to encourage expenditure, but how to curb it. Opposition to central control was silenced by referring to the lower rates. In public health, it was different. The realization of the highest purposes of government necessitated increased expenditure, higher rates. The problem was how to induce activity and expenditure, not how to check them. When the central authority went a little beyond its sphere in attempting to do the actual work of administration, the necessary increase in expenditures and the cry against centralization produced a most powerful combination for opposition to the law.

The legislation of 1854 resulted in a change in the constitution and attitude of the General Board of Health, but not until 1858 was it abolished and its powers transferred to the Privy Council or Secretary of State. The way had been paved for the final move by several acts of more or less importance conferring certain powers upon these two authorities. The virulence of cholera and the total in-

ability of the local authorities to cope with it, induced Parliament in 1855, just after a threatened epidemic, to pass an act conferring upon the Privy Council large powers regarding contagious diseases.¹ Logically, we would suppose that the General Board of Health would have been given these powers, but the Act reflects the opposition to the Board, so prevalent at that time. Thus, when the dismemberment of the Board was determined upon, all the powers it possessed of this character were transferred to the Privy Council.²

The change of 1857, whereby all the members of the Board had become *ex officio* members, was the last nail in the coffin. The following year the "Local Government Act, 1858"³ was passed, which specifically stated that "whenever the sanction, consent, direction or approval of the General Board of Health is required by law * * * such powers may * * * be exercised without such" approval, and none was to be substituted except as afterwards provided.⁴ What powers were vested in any central authority were vested in "One of Her Majesty's Principal Secretaries of State," but his sphere of action was very narrow indeed compared with that of the former General Board of Health. He was given certain powers as to boundaries of places wishing to adopt the Act, and of subdivisions for election purposes, but a petition had to be presented by at least one-tenth of the ratepayers and an inquiry held before these powers could be exercised. Whether the Act should be adopted was determined by the locality and it alone, unless the Public Health Act of 1848 was already in force, in which case its adoption became compulsory.⁵ The consent of the

¹ Diseases Prevention Act, 18 & 19 V., c. 116.

² 21 & 22 V., c. 97. See also Vaccination, 30 & 31 V., c. 84.

³ 21 & 22 V., c. 98.

⁴ *Ibid.*, s. 8.

⁵ *Ibid.*, s. 12, 16, 24. The 26 & 27 V., c. 17, s. 2, made the approval of the Secretary of State necessary in places of less than 3,000 inhabitants.

Secretary of State was necessary to the purchase of property for new streets, the mortgaging of rates and the borrowing of money.¹ Certain other provisions were given relating to financial matters, but as they will be discussed in subsequent chapters, they may be omitted here. Provisional orders and orders in council might be amended or repealed by a provisional order issued by the Secretary of State, provided a petition had been presented by the local board or by a majority of the ratepayers or owners, and a local inquiry had been made.² The alteration of boundaries and the borrowing of money were to be dealt with similarly.³

The most interesting part of the Act is what it omits to re-enact, and it is in this respect that it contrasts most strikingly with the Act of 1848. The tone of the earlier law was that of compulsion. Its purpose was not only to facilitate but to compel the exercise of larger powers by local authorities. In the Acts of 1858, we find an entire absence of powers of compulsion, except in such unusual instances as cholera epidemics. The powers of investigation and inquiry still remained, but their object was confined to facilitating the adoption of acts, to inducing local authorities to undertake sanitary reforms, and to disseminating knowledge.

The actual attitude of the Secretary of State and his subordinates was entirely in accord with the theory of the law, for while it was not obligatory that the requests of the localities be granted, he did very much as he was requested and did not undertake to direct their actions. What was done towards arousing the people and diffusing the latest successful experiments and inventions in sanitary science, was done chiefly by the Privy Council through its medical officer.

Between 1858 and 1872, numerous acts were passed conferring upon local authorities additional powers, but from

¹ 21 & 22 V., c. 98, s. 36, 57.

² *Ibid.*, s. 77.

³ *Ibid.*, s. 78.

the standpoint of the present study, only three or four are of importance. A tendency towards centralization is again plainly manifest. Eight years were sufficient to prove that local self-government pure and simple was undesirable. The first of these acts provides that when complaint is made that the local board of health, the sewerage authority or the nuisance authority is in default, *i. e.*, neglecting to perform its duty, the Secretary of State shall, after due inquiry, set a limit within which time the duties must be performed. If this order is not obeyed, he may appoint a person to perform the duties, and the expenses incurred are to be borne by the locality whose authority is in default.¹

The weakness of the plan lay in not declaring how the expense was to be momentarily met, and how the rates were to be levied and collected in case the proper authorities refused to act. These defects were soon remedied by providing that the expense thus incurred was to be considered a debt, and in case the proper authority refused to pay the required amount, the Secretary of State could appoint a person to levy and collect a local rate, pay expenses, and in case of a surplus hand it over to the local authority. Until this could be done the sum needed was to be borrowed, but all expense finally fell upon the locality and in the manner described.³

The student just fresh from the study of the opposition to centralized administration, which reached high tide about 1858, is somewhat surprised to see so sudden a reaction, and wonders what were the causes. If the mortality tables be consulted, it is found that since 1860 the death-rate had increased two per one thousand, and particularly among children in the larger cities had disease become destructive.⁴ While improvement had been made in many places, it was

¹ 29 & 30 V., c. 90, s. 49. ² 31 & 32 V., c. 115, s. 8. ³ 32 & 33 V., c. 100, s. 5.

⁴ Hansard, *op. cit.*, Vol. 184, pp. 1377-1381, 2071.

found that unsanitary conditions largely prevailed. The Privy Council had aided aspiring localities with much information and advice, and where there existed an earnest desire for improvement successful results were obtained. But many other localities, which were indifferent, apathetic and careless, were not doing much to better conditions. It was not because ample power could not be easily obtained, but because the sense of duty was not sufficiently strong, and no superior authority existed which could compel the execution of the law. Local self-government pure and simple had proven a failure. Efficient administration was of national not local importance. A cholera epidemic again threatened, and public opinion was ready for the insertion of the word *must* in this department of local government as it had been in another. The Act of 1866 was the result.¹

It is important, however, to note that the new plan was not similar to that introduced in 1848 either. The theory of the Act of 1848, although not carried out logically, was the compulsory adoption of powers in places where greatly needed. The Act of 1866 was the expression of the idea that when once powers had been adopted or imposed by a general act, the locality *must* exercise them. It did not give a central administrative authority power to impose duties, but did give it power to enforce them when once the locality had assumed or Parliament had imposed them. The value of this step is greater than might at first be observed, for although the adoption of many of the acts passed was not compulsory but optional with the locality, the competence of local authorities had been enlarged considerably by acts of general application. Much depended upon the attitude of Parliament as to what the future of the plan should be, for if the number of adoptive acts was increased, and few

¹ Upon this subject see Hansard, *op. cit.*, Vol. 210, pp. 861, 870; also Vol. 212, pp. 1248-1257.

duties imposed compulsorily, the local authorities could escape from the influence of the Act by refusing to assume responsibilities. No doubt this loop-hole was perceived as to many of the laws then upon the statute books, and we shall soon see how the defect was remedied by the Public Health Acts of 1872 and 1875.

Before passing to the laws now in force, let us ascertain what were other defects of the existing system, and what had been accomplished when the eighth decade ushered in a system in many respects new.¹

The utter lack of a uniform system is probably the most noticeable and important. While every locality does not need the same powers and privileges, and some allowance should be made for varying needs, the results are most disastrous when scarcely any uniform system exists as a basis. Up to 1872, a place might have adopted part or all of the Acts of 1848 and 1858 with their amending acts, or it might have been governed by local acts, or a combination of local and general acts, or it might have been under the old system of administration where the justices were about the only sanitary authorities. Hardly any two localities were governed by precisely the same statutes. The indifferent had the fewest powers and responsibilities, and where reform was most needed, it was usually the farthest from being secured. The result was inconceivable confusion as to the competence of local authorities and an inexplicable intermingling of jurisdictions. In rural communities, the parish vestry was the sewer authority, the board of guardians the nuisance authority, and powers to construct and maintain improvements were in the hands of still other bodies.² Areas and author-

¹ The best Parliamentary Report upon the history previous to 1871 is the Report of the Sanitary Commission, 1869-1871, S. P., 1871, Vol. 35. I am also indebted to Simon, *English Sanitary Institutions*, for many facts.

² Simon, *op. cit.*, pp. 322-3.

ities did not coincide, and it was almost impossible to fix the responsibility either for evasion of duty or misapplication of power. Inactive boards did little more than keep their roads in repair, and by means of light rates purchased popularity which was seldom broken in upon by some zealous reformer, more influenced by sanitary evils than higher rates.¹

The statutes relating to the central authorities and their powers were somewhat better, but still far from perfect. Four authorities were vested with more or less control; the Home Office—Secretary of State, Privy Council, Board of Trade and the Poor Law Board. In many instances their realms were not mutually exclusive, and their independence hindered unity of purpose and action. The staff of the Home Office was insufficient, and as it had no general power of inspection, what it learned came principally through applications for approval of loans and for provisional orders. Until the plan of central intervention in cases of default was introduced, it was only with the most active boards that the Secretary of State had more than a most infrequent communication.² But even in this case, the requirement that a complaint must first be made, limited its activity somewhat because of the widespread indifference and the opposition to central supervision.

Some of the objections to the existing system were removed in 1871, when the powers and functions of the central authorities relative to public health, prevention of disease, vaccination, registration of births, deaths and marriages, baths and washhouses, public improvements, artisans' and laborers' dwellings, and local taxation returns, were transferred to the Local Government Board, the successor of the Poor Law Board.³ The following year the powers of the

¹ Rep. of L. G. B., S. P., 1872, Vol. 28, p. 44.

² *Ibid.*, p. 43.

³ 34 & 35 V., c. 70. For references to the various acts amended, see the Schedule of this Act.

Board of Trade and the Home Secretary under Highways and Turnpike Acts were likewise transferred.¹ The Poor Law Board was probably selected because of its large experience, eminent success, efficient organization and competent officials.²

Although the complete consideration of the results of the various systems will be given in its proper place, i. e. after they have been described, it will not be amiss to stop for just a moment and consider sanitary conditions in 1871. Consulting the death-rates, we find these facts:—

Average annual death-rate	1838-1848	1849-1858	1859-1866	1867-1871
per 1000 living—	22.23	22.46	22.44	22.26

Discarding the slight variations upon which too much dependence must not be placed, it is seen that the death-rate remained about the same since 1848, with a slight downward tendency since 1866. But as has been said, considering the great growth of cities this is a favorable sign, and no doubt the rate was kept down by sanitary improvements undertaken by places governed by the Public Health and Local Government Acts, which were in force in about seven hundred towns and districts.³ Most of the larger boroughs, as Liverpool, Birmingham and Manchester, were under local acts, the latter having twenty-two,⁴ and were doing much to better conditions, but beyond these two classes there was an amazing lack of proper administration. The effect of the adoption of the general laws was almost invariably decreased mortality.⁵ Still conditions were far from ideal and a reform was most urgent.

¹ 35 & 36 V., c. 79, s. 34, 36; 38 & 39 V., c. 55, s. 144-148.

² Cf. Simon, *op. cit.*, p. 348.

³ Rep. of the Royal San. Com., S. P., 1871, Vol. 35, pp. 15, 177-182.; Hansard, *op. cit.*, Vol. 213, p. 446.

⁴ S. P., 1871, Vol. 35, pp. 177, 226.

⁵ In Bristol the rate fell from 31 to 22 per 1000. *Ibid.*, p. 178.

It was not until the eighth decade of this century that a comprehensive administrative system for the execution of public health laws was established, embracing the whole of England and Wales, excluding the Metropolis. In 1872 an act was passed creating local authorities and dividing the country into urban and rural sanitary districts.¹ In the former, the authority was either the borough council, improvement commissioners or a local board especially created. In the latter, or the remainder of the country, the board of guardians was the authority. In 1875 an act was passed whose principal object was to amend and consolidate the existing laws,² which had been enacted from time to time without any exact knowledge as to their relations or combined effect. But it went further; it made changes in the law itself, it extended and completed the statutory reforms which the Acts of 1872 and 1874 had begun. Since the laws passed in this decade are the basis of the present system, and have not undergone great modification, no description is needed except as is given in the outline of the system now existing. It is not proposed of course to give a detailed account, even of central control. For the minute particulars, reference must be made to the statutes.³ The principal features will be pointed out, and I shall try to give an idea of the extent of the control and its varied forms by selecting as far as possible representative provisions. Public Health will be the central figure around which other provisions will be grouped. I pray the reader to bear in mind that this is not a legal treatise and that the field I have attempted to cover

¹ For an interesting debate see Hansard, *op. cit.*, Vol. 210, 212, 213.

² It embodied 47 acts wholly or partially repealed. Cf. Clifford, *op. cit.*, ii., p. 331.

³ See also Glen, *The Law Relating to Public Health and Local Government*, Eleventh Ed., for an excellent compilation of the statutes, the decisions of the courts, and the orders and regulations of the Local Government Board.

in this chapter is the most conglomerate and confused portion of English local government, all of which is a product of slow growth, conservative experiments and anomalies. General rules are very dangerous, for they are seldom if ever absolutely true and the exceptions are often as important and as numerous as the conditions to which the rule is supposed to apply.

2. Central Authority.

In general. It is not necessary to repeat what was said in the previous chapter regarding the constitution, the supervision of subordinate officers or the general powers of inquiry of the Local Government Board. They are the same in nearly all particulars as under the poor laws. The Board itself does not have quite as wide powers of general inspection as in the case of the poor laws, but when a decision is required, or when certain powers are to be exercised, it has received ample powers of inquiry in order that its action may not be immature nor founded upon incomplete information. It does not have a representative before the parish, county or district councils, as it has before the union, but its inspectors may attend the meetings of the district councils and take part in the discussion, although they cannot vote.¹ It may also require numerous and detailed reports from the local authorities themselves.² The same is true in general of the other central departments that possess some control over local authorities. They are not hindered by lack of power to investigate and to ascertain the required facts.

Quasi-legislative powers. To give an outline of the powers of sanitary authorities or district councils, as they are now

¹ 38 & 39 V., c. 55, s. 205, 293-296. About 900 local inquiries were held during 1895 by engineering inspectors of the Board. 25th Rep. of L. G. B., 1895-6, pp. 38, 120.

² *Ibid.*, s. 206.

called, the limits of the space at command make impossible. The Public Health and Sanitary Acts have conferred enormous powers and imposed vast responsibilities, but besides these there are numerous "adoptive acts," i. e., acts that may be put into operation at the option of the locality, which have also increased their competence.¹ It is important to note, however, the part the Local Government Board and other central administrative authorities play in the conferring of powers.

As has been said, all England is divided into rural and urban county districts (sanitary districts) which may be said to correspond roughly with the urban or rural character of the locality, and their chief difference is in the power possessed by the local authority—the district council. Very briefly one may say that the rural councils deal with sewerage, drainage, water supply, inspection and prevention of nuisances, inspection and regulation of lodging houses and cellars, provision of hospitals, cemeteries and mortuaries, and infectious diseases. Urban councils deal with all these, and besides, undertake the maintenance, cleansing and improvement of streets and roads, town improvements, lighting and regulation of traffic.² But the line between rural and urban county districts is not sharply drawn, and the only clear, practical distinction is whether the local authority is the rural district council—the transformed board of guardians—or the urban district council. As to their functions, the districts are more like a huge number of concentric circles; the outermost, having the largest powers, being the urban district with all the functions of the public health acts, adoptive acts, and kindred others; the innermost being the rural district of the most limited competence. Between

¹ An incomplete idea may be secured from consulting the purposes for which loans were made during 1895-6. See chapter VI.

² Wright and Hobhouse, *Local Government and Local Taxation*, p. 40.

the two are numberless other districts having various powers and functions, and hardly any two coincide. Whence comes this queer condition? It is partially due to the existence of adoptive acts; but there is another explanation.

The Local Government Board has power to constitute a local government district, provided a petition requesting it has been received which was passed by the owners and rate-payers of a locality "having a known and defined boundary," or signed by one-tenth of the persons rated for the relief of the poor in a locality having no defined boundaries.¹ This is equivalent to the establishment of a *new* urban district, for the local board which would come into existence is an urban district council.² The Board is not *obliged* to establish the new district and may do what it pleases with the petition. Going a step further, the Board may, upon application from the rural district council or the ratepayers, the assessment of whose hereditaments amounts to at least one-tenth of the net ratable value of such district or any contributory place therein, invest such authority with *any or all* of the rights, privileges, duties, and powers of an urban district council, specifying conditions as to the time, portion of district and manner of assuming such functions.³ It may also invest any urban district with any or all of the powers of a rural district without any petition, but this is practically unimportant, as the instances in which rural councils have powers not belonging to urban are very rare, the most important relating to the question of water supply in private houses.⁴ The Board may also constitute any sanitary authority, whose district forms or abuts upon any port or harbor, a port sanitary authority, thereby increasing its powers.⁵ To go still further, the Board may order a local authority to remove or

¹ 38 & 39 V., c. 55, s. 272.

² *Ibid.*, s. 6.

³ 38 & 39 V., c. 55, s. 276; 53 & 54 V., c. 59, s. 5; 55 & 56 V., c. 57, s. 4.

⁴ 41 & 42 V., c. 25, especially s. 11.

⁵ 38 & 39 V., c. 55, s. 287.

contract for the removal of house refuse from the premises, the cleaning of earth closets, ashpits, cesspools, and the cleansing and watering of streets.¹ But the largest powers in this direction are in connection with epidemic, endemic and contagious diseases. Here it is almost supreme. It may make, alter or repeal such regulations as seem proper concerning interment of the dead, house to house visitation, medical aid, disinfection, cleansing, ventilation, *et cetera*; and may even determine what authorities shall enforce these regulations.²

These provisions savor much of legislative power, but their character and limitations, in certain instances, petitions being required to be first presented, stamp them as nothing more than quasi-legislative. It is to be noticed, however, that the conditions are not stringent. One-tenth of the persons rated for the relief of the poor was a rather high limit at one time, but there has been such a great change in the attitude of the public that it is easy now to get this number to petition, and practically it is not much of a limitation. It is more of a relic of the idea, which was so strong at one time but which has lost much of its power, that the locality should have much to say concerning the enactment of legislation which is of general interest as well as that which is of a purely local character.

The fundamental object of the system is to prevent powers being conferred by general act or by the Local Government Board which are absolutely not desired by the locality, and which, because not desired or needed, will not be properly exercised, and yet to avoid the other extreme of limiting too narrowly the functions of local authorities by general act, while leaving to special legislation the granting of powers

¹ 38 & 39 V., c. 55, s. 42. Cf. s. 80-90.

² *Ibid.*, s. 130-139; 46 & 47 V., c. 59, s. 2. Cf. 48 & 49 V., c. 61; 52 & 53 V., c. 72.

needed in certain localities but not in all. Not that there is anything inherently wrong in the *idea* of special legislation, but the evils arising from ill-considered legislation are so great that the work done by special legislation has been transferred to an administrative authority.

The result has been, as noted, that councils exist which have every degree of power. About one hundred orders are issued annually investing rural councils with urban powers, which usually refer to the cleansing and watering of streets, the making of by-laws regarding nuisances and new buildings, contracts for lighting, and the regulation of streets.¹ Past experience commends very highly this easy, inexpensive yet highly successful method of granting local powers.

The Local Government Board has other powers of a similar character. It may by a provisional order dissolve a local government district, a special drainage district, or an improvement act district whose area is co-extensive with that of a borough.² It may likewise confirm *in toto* or with modifications schemes for the improvement of districts and houses unfit for human habitation according to the Housing of the Working Classes Act, 1890.³ Under the Allotments Act, discretionary power resides in the county council, for a provisional order *must* be prepared if the county council requests.⁴ To put into force the provisions of the Lands Clauses Consolidation Acts regarding the purchase of land otherwise than by agreement, the Board issues a provisional order;⁵ and in the same manner county districts or parts thereof may be united into one district to procure a common water supply, to construct a sewer, or for any purpose within their powers.⁶

¹ 25th Rep. of L. G. B., 1895-6, p. 117; pp. 620-626, App.

² 38 & 39 V., c. 55, s. 270.

³ 53 & 54 V., c. 70, s. 8, 10, 15.

⁴ 50 & 51 V., c. 48, s. 3.

⁵ 38 & 39 V., c. 55, s. 176.

⁶ *Ibid.*, s. 279. Cf. 51 & 52 V., c. 41, s. 14.

The Act of 1888 made it lawful for the Local Government Board to transfer by provisional order to county councils such powers and duties of the Privy Council, Secretary of State, Board of Trade, Local Government Board, Education Department, or any other government department, as relates to matters within the county, or as are held by any commissioners of sewers, conservators, or other public body (the municipal borough, district council, school board and board of guardians excepted). If the order refers to powers and duties of departments of the central government, it must be approved by the department affected.¹ The powers which it was thought might be transferred were enumerated in the bill as originally introduced, and dealt with burial-grounds, piers and wharves, gas and water works, tramways, electric lighting, baths and wash-houses, and the power to force sanitary authorities to perform their duties.² As yet no transfers have been made. One was attempted in 1889, but the opposition was too great and it fell through.³

In another class of cases, the approval of the Board is the only requirement; confirmation by Parliament is not necessary. Agreements made by two or more local authorities regarding the union of sewers,⁴ the constitution of any portion of a rural district a special drainage district,⁵ and the payment of expenses incurred by municipal boroughs in promoting or opposing bills in Parliament from the local rates are representative of this class.⁶ The Board may also declare any expenses incurred by the district council to be special expenses, that is, to be borne by a portion of the district.⁷

Next to the Local Government Board, the central depart-

¹ 51 & 52 V., c. 41, s. 10.

² Hobhouse and Fanshawe, *op. cit.*, p. 21.

³ Simon, *op. cit.*, pp. 422-3.

⁴ 38 & 39 V., c. 55, s. 28, 32. Cf. 53 V., c. 5, s. 26.

⁵ *Ibid.*, s. 277.

⁶ *Ibid.*, s. 313. Cf. 51 & 52 V., c. 41, s. 15.

⁷ *Ibid.*, s. 229, 230. 53 & 54 V., c. 59, s. 49.

ments having important powers are the Board of Agriculture, the Secretary of State and the Board of Trade. The activity of the former is principally confined to the management of animals infected with contagious diseases or destructive insects. When it becomes necessary, the Board of Agriculture may assume almost absolute control over local authorities as well as private individuals. It may issue orders that are as far reaching and that must be enforced just as rigidly as statutory enactments. The limitations upon its power are comparatively slight.¹

The powers of the Secretary of State are mostly concerned with subjects the administration of which is almost completely centralized, as the factory acts, the registration of foreigners, the manufacture of explosives and the control of prisoners. The exceptions to this rule are unimportant.²

The Board of Trade has large powers under the Weights and Measures Act, but they are largely of an administrative character.³ It may also authorize companies or persons to construct and maintain gas-works or water-works in any district within which there is no existing corporation or body of commissioners authorized to do so.⁴ It may also license any district council, company or person to supply electricity for public or private purposes where the consent of the local authorities is not given.⁵ Local authorities owning gas-works may be relieved from the obligation of supplying gas in a place which is sufficiently well supplied with electric light and where the gas plant has ceased to be remunerative.⁶

¹ 40 & 41 V., c. 68; 52 & 53 V., c. 30, s. 13; 57 & 58 V., c. 57.

² *Vide* 6 & 7 V., c. 68, s. 9; 43 & 44 V., c. 35. See also the chapter upon "Police."

³ 52 & 53 V., c. 21.

⁴ The consent of the local authorities is required, but may be waived by the Board of Trade. 33 & 34 V., c. 70, s. 3, 4, 6.

⁵ 45 & 46 V., c. 56, s. 3, 4.

⁶ *Ibid.*, s. 29.

No local authority may transfer its powers and liabilities as regards electric lighting without the consent of the Board of Trade.¹

As to the practical working of these provisions, little is said in the reports of the various departments. The prevalent opinion is that they are quite satisfactory, and the absence of complaints is indirectly a high commendation. Even the latest acts contain similar provisions, and although there is a tendency towards decentralization it is principally in the direction of minor details, which since the establishment of the county council can be as well administered by this body as by the central departments. One great result of the transfer from Parliament to administrative authorities of legislative functions is the small amount of special legislation, but this subject will be discussed in a subsequent chapter.

Powers relating to local areas and boundaries. It is hardly possible to separate this class of powers from the preceding, for an alteration of boundaries often means an increase or decrease in the powers of a given area, and the change is often made with this end wholly in view. It is, therefore, as much a *quasi*-legislative power as any of the powers just mentioned. But from this extreme, the provisions shade off into instances where the object is purely administrative, such as the fixing of ward boundaries for election purposes.

Until the Local Government Act of 1888 went into effect, the Local Government Board was practically the supreme authority over local areas as far as the Public Health and Local Government Acts were concerned. It usually had to exercise its powers through provisional orders, but the restraining influence of Parliament was not large either actually or potentially. As has been noted, it had the power to constitute or dissolve, by a provisional order, a local government

¹ 45 & 46 V., c. 56, s. 11.

districts, but it could do more. It could merge them, separate any portion, add it to another, or modify in almost any manner it chose.¹ The provisional order divided the district into wards and decided the number of councillors to be elected from each in case a new district was created or two or more united,² and if boundaries were altered so as to necessitate a re-arrangement, it provided for this also.³ The Act of 1888 followed this plan to a certain extent by providing that the number of county councillors and their apportionment should be determined by the Local Government Board.⁴ Where the borough council is not the urban district council for all of the area of the borough, and where the borough is either co-extensive with or wholly or partially included within an urban district, the Board may make a provisional order determining the area of the county district, and if the population exceeds 50,000, may constitute a county borough.⁵ The Board may also issue an order altering the boundary of a county or borough, uniting a county and county borough, dividing a county, constituting a borough of over 50,000 population a county borough, changing the electoral divisions of a county or the number of councillors, or modifying the boundary of any area of local government, providing the council of the county or borough has sent a "representation" to that effect. If the order performs any of the first four operations, it must be confirmed by Parliament, and all the changes with respect to the boundaries of wards and apportionment of councillors or aldermen necessitated by the exercise of the above powers may be

¹ 38 & 39 V., c. 55, s. 270, 271, 272, 279.

² *Ibid.*, s. 271, 280.

³ *Ibid.*, s. 270.

⁴ 51 & 52 V., c. 41, s. 2 (3). No provisional order is required.

⁵ *Ibid.*, s. 52. In 1883 there were 14 cases of boroughs and urban sanitary districts overlapping one another, and having an authority other than borough council. Cf. Hobhouse & Fanshawe, *op. cit.*, p. 97.

made.¹ If the county council thinks that the area of a county district should be altered, divided, united with others, converted into an urban district if a rural district, or *vice versa*, divided into wards, or the boundaries of wards altered or the apportionment of members changed, it may so order. If the order refers to any but the last two subjects, it must be submitted to the Local Government Board, which *must* approve, unless a petition is presented to the contrary by at least one-sixth of the electors in the place affected, in which case it may confirm, reject or modify.² Similar subjects under the Local Government Act of 1894 are almost entirely within the control of the county council, except so far as the poor laws and the Act of 1888 enact other provisions.³

The importance of these powers is naturally great, but owing to the confused condition of local areas and the great need of reform, it is greatly increased. During 1895, the boundaries of thirty-nine administrative counties and county boroughs, and fifteen boroughs were changed by provisional orders; twenty urban districts were constituted and forty increased or diminished in extent by orders issued by the county council and confirmed by the Board; and 131 additional orders relating to various subjects were prepared by county councils or joint committees and confirmed by the Board.⁴ In forty-four provisional orders, sections as to alterations in electoral divisions and the number of councillors in counties and boroughs were inserted.⁵

All in all, the provisions described seem to be working smoothly, although the more recent ones have hardly been in operation long enough to be fairly tested. It is definitely known that the older plans have been satisfactory, and it is

¹ 51 & 52 V., c. 41, s. 54, 55. ² *Ibid.*, s. 57; Cf. s. 59, and 50 & 51 V., c. 61.

³ 56 & 57 V., c. 73, s. 2, 36-42, 53, 69.

⁴ 25th Rep. of L. G. B., 1895-6, pp. 362-383, App.

⁵ *Ibid.*, p. 25. In all fifty orders were confirmed.

very likely that the recent changes have not decentralized them to such an extent as to be disastrous. The charge of gerrymandering is almost unheard of, and although there are other causes that have led to this result, it is also certain that the possession of control over local areas and electoral divisions by a central, non-political body has contributed no small amount towards the absence of the charge.

Power over local acts. The Local Government Board does not possess the large powers over local acts relating to public health that it does over those relating to poor relief. It can, however, by provisional order wholly or partially repeal, alter or amend any that do not relate to the conservancy of rivers, or do not confer powers and privileges upon corporations, companies or individuals for their own pecuniary benefit, but which deal with the same matters as the sanitary and public health acts, an application having been previously made by the local authority of the district.¹ It may likewise transfer to the county council any powers or duties of any quarter sessions, or justices, or committees thereof, under any local act, that are similar in character to those transferred to county councils by the Local Government Act of 1888, and in this case a previous application is not necessary.² In 1895, provisional orders amending or repealing local acts relating to twenty-two places were confirmed.³

Approval of by-laws. Probably the most common provision is that requiring the approval of the central government before by-laws issued by local authorities can be enforced. Those regarding the management of markets and fairs,⁴ allotments,⁵ baths and wash-houses,⁶ main roads and highways,⁷ public museums and gymnasiums,⁸ the housing of the work-

¹ 38 & 39 V., c. 55, s. 303.

² 51 & 52 V., c. 41, s. 4.

³ 25th Rep. of L. G. B., 1895-6, pp. 593-595, App.

⁴ 10 & 11 V., c. 14, s. 42, 44; 38 & 39 V., c. 55, s. 184.

⁵ 50 & 51 V., c. 48, s. 6.

⁶ 34 & 35 V., c. 70, s. 2; 41 & 42 V., c. 14, s. 6.

⁷ 41 & 42 V., c. 77, s. 26, 35.

⁸ 54 & 55 V., c. 22, s. 7.

ing classes,¹ streets, construction, ventilation, sanitation and stability of buildings,² and all other matters that are included under the public health acts must be approved by the Local Government Board.³ Besides the acts here referred to, there are many others imposing a similar restriction upon the various local authorities, and in 1895, 283 series were confirmed under provisional orders and general and local acts upon the following subjects: scavenging and cleansing, nuisances, common lodging houses, streets and buildings, markets, slaughter-houses, hackney carriages, public bathing, pleasure grounds, animals for hire, pleasure boats, houses let in lodging, cemeteries, mortuaries, offensive trades, sanitary conveniences, swings, water-closets, tramways, highways and locomotives, and omnibuses. The authorities included urban and rural district councils, town councils, vestries, local boards of health and county councils.⁴ Borough councils when acting as municipal authorities, are required to send their by-laws to the Secretary of State, and if they are not disallowed within forty days by the Queen upon the advice of the Privy Council, they go into effect,⁵ and in a few instances the county councils do likewise.⁶

The Board of Trade also possesses some powers of this nature. By-laws regulating the rate of speed to be observed upon tramways, the distances at which carriages may follow one another, places of stopping and general traffic must be sent to this department, which may disallow within two months.⁷ Those issued by urban district coun-

¹ 53 & 54 V., c. 70, s. 84.

² 38 & 39 V., c. 55, s. 157.

³ *Ibid.*, s. 184; 53 & 54 V., c. 59, s. 9. *Vide* also 47 V., c. 12.

⁴ 25th Rep. of L. G. B., 1895-6, pp. 602-610, App. The parish council is subject to the same conditions, although it does not appear upon the list. See Report, p. 43.

⁵ 5 & 6 Wm. IV., c. 76, s. 90; 38 & 39 V., c. 55, s. 187; 45 & 46 V., c. 50, s. 23.

⁶ 51 & 52 V., c. 41, s. 16; 54 & 55 V., c. 65, s. 12.

⁷ 33 & 34 V., c. 78, s. 46.

cils relating to the prevention of danger or obstruction to the public from posts, wires, tubes or any other apparatus stretched or placed above, along or across any street for the purpose of lighting, telegraph, telephone, railway signaling or other purpose must be approved before taking effect.¹

* The same is true of the by-laws affecting the sale of coal, its weight, delivery, fees for weighing, and even the inspection of weights and measures.²

To summarize; there is hardly an instance, if any at all, where a by-law imposing an obligation upon private individuals is not required to be approved either directly or indirectly by a central authority before taking effect.

This plan, which has existed ever since the first Public Health Act in 1848, being taken from the Municipal Corporations Act of 1835, is usually regarded with favor. In its earliest days not many by-laws were presented, but at present from three to five hundred series are approved every year.³ Formerly not much effort was made to force the local authorities to conform to the ideas of the central authorities. The idea of local autonomy did not permit it. Nevertheless, some influence was exerted by the formation of model by-laws and the distribution of information regarding the subject matter. This has been continued down to the present,⁴ and now the practice is to submit the proposed by-laws to the central authority, which examines the details from the legal, sanitary and technical points of view, and suggests what changes are needed; then they are finally prepared, again presented, and usually approved.⁵ Not much friction

¹ 45 & 46 V., c. 56, s. 6; 53 & 54 V., c. 59, s. 13.

² 52 & 53 V., c. 21, s. 9, 28; 53 & 54 V., c. 59, s. 13.

³ The by-laws of school authorities are not included in this list, but will be discussed in the chapter on Elementary Education. They must be approved also.

⁴ For those followed in 1883, see Smith and Smith, *The Laws Concerning Public Health*.

⁵ 25th Rep. of L. G. B., 1895-6, p. 127.

exists between the local and central authorities, not because the latter are inactive and submissive, but because the former willingly except and follow the advice given. Great advantages arise from the communications and conferences. Much litigation is prevented by the excellent legal form of the by-laws and the selection of the proper methods for enforcing their provisions. If an authority tends to overstep its bounds, the central authority with superior legal and scientific knowledge points out the mistake, which is at once remedied. For the same reasons the law is well enforced, and uniformity both in form and substance is secured. Although the central authorities do not *compel* compliance with their wishes, they have been very successful in securing the adoption of their recommendations, and I have heard of no objections to the system. Its gradual extension even to the last important act—that of 1894—shows that it is viewed very favorably.

Power over local officers. In the preceding pages the power to apportion county and district councillors was incidentally noted, but the control of the Board over local officers is much more extensive. The former provisions did not in reality establish any control.

The Board has the same powers relative to any local officer a portion of whose salary is paid out of the moneys voted by Parliament, as it has over the subordinate officers of the union; that is, it may fix their qualifications, method of appointment, duties, salaries, and tenure of office. In practice, only two officers, the medical officer of health and the inspector of nuisances, come within the requirements. The same person may be appointed to the same position in two or more districts upon the sanction of the Board, which prescribes the mode of appointment and the way in which the expenses necessitated by such appointment shall be divided.¹

¹ 38 & 39 V., c. 55, s. 189-191. 51 & 52 V., c. 41, s. 24 (c), fixed the amount to be contributed by the central government at one-half the salary.

The Board may also unite districts partially or wholly within the same county for the purpose of appointing a medical officer of health, may fix mode of appointment and removal, and apportion expenses.¹ To prevent rural councils from paying inadequate salaries and thus impairing the efficiency of their officers, the salaries of the clerk and treasurer in rural county districts must be approved by the Board.² There is little danger from this source in urban districts.

This plan, which was introduced in 1872³ and completed in 1875, was in some degree a return to the theory, which existed prior to 1858, or 1854 at least, that the government should have some control over the local administrative authorities themselves. Its apparent basis in 1872 was the idea that if the state contributes to a local undertaking it should be granted some control over the administration. This was not the fundamental reason, however. It was the excuse for the introduction of central control rather than the cause. The foremost students saw that if the law was to be well enforced, independent officers were needed. Public opinion would not tolerate a system where local officers were appointed by or were made responsible to the central government simply because the law would thus be better enforced. Hence it was proposed to pay part of the expense, not *merely* because aid was needed, but because central control ought to exist and public opinion would hardly permit it without government aid. It was thought at the time of the passage of the act that this would be sufficient inducement to persuade all authorities to submit to the control. But unfortunately the salaries of only two officers were partially paid. These were, it is true, the important factors in the enforcement of the law, and many localities refused to accept the subvention and thus avoided supervision. The law did not specify the qualifications of the persons chosen,

¹ 38 & 39 V., c. 55, s. 286.

² *Ibid.*, s. 190.

³ 35 & 36 V., c. 79, s. 10.

and thus there was no guarantee that competent persons would be chosen in places where indifference, ignorance or opposition ruled. The districts were usually too small to support alone one officer and require him to give his whole time to the duties of the office. The union of several districts was pressed with much zeal, but as it was not until 1875 that the Board acting alone had power to unite districts, the benefits attained in this direction were not large. The salaries assigned by the local authorities were small, and they foresaw that if the central government once got a hold, it would cause a much larger expense and the subvention would not counterbalance the increase. Thus where moral obligations did not influence the minds of the authorities, the Board secured no control. In 1873, of the 1104 authorities which had appointed officers of health, only 625 were to receive half payment, 415 were not, and 64 did not report.¹ Probably some were too independent to submit to the control and were appointing efficient officers, but most of those not receiving aid were inefficient and negligent. The regulations imposed by the Board were not rigid at first, but the inducement was not sufficiently large to cause localities to submit to them. Here, as usually in cases of conditional subventions, those most needing central supervision were the last to submit to it. No doubt some good results were obtained during the early years of its existence, but they were not commensurate with the expectations, and it is doubtful whether they justified the expenditure of from £50,000 to £60,000 annually.²

Since 1873, many changes have occurred. There has always been a tendency to assign inadequate salaries, and the Board has felt itself bound to withhold its sanction in

¹ Simon, *op. cit.*, p. 370.

² Upon this general subject see Simon, *op. cit.*, pp. 360-371; Hansard, *op. cit.*, Vol. 223, pp. 1252-3.

many cases. Instances have not been infrequent where aid from the Parliamentary grant has been refused, but they are decreasing.¹ At the same time the standards of the Board have been raised, and in 1895 about ninety per cent. of the authorities were receiving subventions for the salaries of medical officers of health and inspectors of nuisances. Whether the extended application of central control was brought about by the desire for aid is a question. It undoubtedly did have some effect, but it seems probable that the first impetus came from other directions. After the obligations resting upon local authorities came to be realized, and efficient administration had come to be sought for its own sake, then subventions increased the desire. As a means of arousing the indifferent, the slothful, the stubborn, the plan was not a great success; but as a means of inciting to further activity, it has had some effect.

There is one other case in which the Board has control over the appointment of local officers, that of analysts whose duties are to enforce the law prohibiting the adulteration of food and drugs, and the selling of food and drugs that are adulterated or are not of the nature, substance and quality demanded. They are appointed and removed by the councils of administrative counties, county boroughs or non-county boroughs having over 10,000 population—London excepted²—and in each case the approval of the Local Government Board must be secured.³ In 1895, the appointment of 238 analysts was approved.⁴

The success of this plan of inspection has been very

¹ Rep. of L. G. B., S. P., 1884, Vol. 37, p. 82; 1886, Vol. 36, pp. 81-82; 1888, Vol. 49, p. 94.

² In London, the commissioners of sewers, vestries or district board of works appoint.

³ 35 & 36 V., c. 74; 38 & 39 V., c. 63, s. 3-II.

⁴ 25th Rep. of L. G. B., 1895-6, p. 130.

marked. Although there are still some places where the law is not executed as it should be, the number is decreasing and the whole country is coming under the system. The number of analyses is increasing but the percentage of adulterations is decreasing. In 1895 there were 43,962 samples examined, 9.3 per cent. of which were adulterated, a fall of over 2 per cent. in the last six years.¹ The change is not due to any leniency upon the part of the analysts; upon the contrary, they have become better able to detect fraud and more determined to enforce the law. The fines are quite heavy, and although the magistrates have tended to be lenient, the law is quite rigidly enforced.² The beneficial results are largely due to the independent position of the analysts, which is secured by requiring the approval of the Board to appointment and removal, but it is not the only cause.

Powers relating to defaulting authorities. The preceding paragraphs show one method whereby the central authority may supervise the execution of the law, but there are other more direct and effective methods. The powers conferred upon the Local Government Board by the Act of 1866 and other laws passed in the next few years have been described. It only remains to note the changes made since 1870, and to ascertain their effects.

In 1874, the right was granted the Board to sue out a *writ of mandamus* to compel rebellious authorities to act within the period determined.³ The following year it was empowered to authorize any police officer within a district having a negligent authority to institute proceedings for the abatement of nuisances.⁴ Otherwise, the Public Health Act

¹ 25th Rep. of L. G. B., 1895-6, p. 132.

² *Ibid.*, p. 131. Cf. also Monod, *Les Mesures Sanitaires en Angleterre depuis 1875 et Leurs Résultats*. *Revue D'Hygiene*, Vol. 13, p. 440.

³ 37 & 38 V., c. 89, s. 20.

⁴ 38 & 39 V., c. 55, s. 106.

of 1875 left the plan as previously described.¹ In recent years some modifications have been introduced. An act passed in 1891 gave the Secretary of State power to instruct an inspector to take steps towards the enforcement of the laws relating to public health in workshops and factories.² Inasmuch as this duty is partially incumbent upon the local sanitary authorities, the Act of 1891 may be said to cause a slight diffusion of central supervision. The Local Government Act of 1894 made a slight step in the direction of decentralization by providing that when a parish council resolves that a rural district council has failed to provide sufficient sewers or water supply, or to enforce any of the provisions of the public health acts which it is their duty to enforce, or to maintain highways in substantial conditions, it may complain to the county council, which may assume these powers itself or deal with the rural district council as the Local Government Board could under the Acts of 1866, 1868, 1869 and 1874.³ As has been said, the importance of the powers of the Board was greatly increased by the Act of 1872, which established urban or rural sanitary authorities throughout all of England and Wales. And recent acts amending the public health law have increased its power by extending the authority of the district councils.⁴

The power of the Board over defaulting authorities is far-reaching and effective. It is necessary that a complaint be filed before an inquiry can be held, but as any one can make complaint and as it has been found that if an authority is negligent there will be at least *one* person willing and ready to so report, this provision has not restrained the activity of the Board. There are quite a number of cases where complaint has been made but the Board has found no default. In the interpretation of the law by the courts, no encroach-

¹ 38 & 39 V., c. 55, s. 299-302.

² 54 & 55 V., c. 75, s. 1-5.

³ 56 & 57 V., c. 73, s. 16.

⁴ See, for instance, 41 & 42 V., c. 25.

ment has been made upon the powers of the Board, and although the cases are few, those that exist are plain and decide that in questions of expediency the judiciary will not interfere.¹

Although stringent methods are provided in case the local authority refuses to act within the allotted time, it is seldom that it is necessary to go this far. In the first few years of the existence of the plan it was necessary to appoint persons to act, but of late years resort is very infrequently had to this course or to application for a *mandamus*. There were four cases in 1892, but in the eighteen years preceding there were not as many in any one year.² In nearly every instance, all that is needed is an order fixing the time within which the default must be remedied, and in some cases an inquiry or even a suggestion is sufficient.³ After a complaint has been received, a local inquiry is held, and ample opportunity is given for all sides to be heard and an investigation made. If steps are not taken to remedy the default, an order is issued fixing the time within which action must be taken. If the authorities still refuse, a *mandamus* is applied for or persons appointed to perform the duties neglected. About nine or ten inquiries are made annually, but in less than half this number are orders issued, which is the last step necessary except in unusual instances.

It is not to be concluded, however, that the power possessed is not far reaching in its influence. The few cases in which it is exercised are sufficient to convince all that it is not a mere form, but a genuine reality, and that in case of negligence, it will be exercised. Consequently, many authorities which would otherwise be indifferent are obliged to maintain an efficient administration, all expenses both of in-

¹ Cf. *The Queen vs Cockerell and another*, L. R., 6 Q. B., 252.

² *Vide* Reports of L. G. B.

³ Rep. of L. G. B., S. P., 1875, Vol. 31, p. 41. Monod, *op. cit.*, p. 435.

quiries and undertakings being ultimately borne by the locality, and the central authority having the power to take temporarily the actual administration from the local authorities. Of course most of the districts are maintaining an efficient administration, not because of the existing penalty but because the advantages are seen and their duties recognized. There are, however, some authorities whose chief incentive to action is to be found in the existence of the central control, while in former years the number was much larger. In the past, central control played a most important part, and owing to wise administration, it is still exerting an important influence, and little can be said of it that is unfavorable.¹ Its capability of adjustment to varying conditions is unlimited.

Another method of central control of very limited application is to be found in the power of withholding the subsidy paid towards the support of medical officers and inspectors of nuisances if returns and reports are not sent to the Local Government Board as required.² The retention of the subsidy is not in the nature of a fine imposed upon the officer, for the expense falls upon the locality which he represents rather than the officer himself. It contributes something, however, towards preventing the selection of incompetent officers.

The Secretary of State also has powers of a somewhat similar character, although not so important or far reaching. He may, upon the report of the Lunacy Commissioners or the "visitors" of any institution for lunatics, direct the Attorney General to prosecute the parties responsible for the commission of the alleged misdemeanors.³ Upon being satisfied that the laws relating to public health are not observed in any workshop, he may authorize an inspector

¹ Cf. Vauthier, *op. cit.*, p. 351; Boutmy, *Le Gouvernement Local et la Tutelle de L'Etat en Angleterre*, *Annales L'Ecole Libre*, I., p. 202; Simon, *op. cit.*, p. 381.

² 51 & 52 V., c., 41, s. 24.

³ 53 V., c. 5, s. 328; see also s. 247.

appointed by him to take the necessary steps to enforce them. Should the district council whose duty it is to enforce the law fail to do so, the inspector may temporarily assume the powers of the council in default.¹ If the justices of peace do not make suitable rules for insuring order and decency in theatres, the Secretary of State may alter or rescind them or make new ones.²

Whenever local authorities fail to enforce the orders of the Board of Agriculture or the provisions of the laws under its supervision, it may appoint private persons to act, and all expenses thus incurred are to be defrayed by the authority in default.³ If it finds that the subordinate officers of a local authority are incompetent or guilty of misconduct, it may direct their removal, but can not fill the vacancy thus caused.⁴ This is an extraordinary power, but the subject is one calling for large powers.

Quasi-judicial powers. There are a number of instances where central authorities have been given the power of deciding disputes involving local authorities or of appointing persons to act as arbitrators, and although questions of law are not often involved, they partake somewhat of the nature of judicial powers. The most important will be discussed in the chapters upon Local Finance and Central Audit, but there are others that deserve notice.

When the overseers of a parish are aggrieved because of the apportionment of expenses for purposes of public health acts, they may appeal within twenty-one days, and the Board has power to make and enforce "an equitable decision."⁵ Appeal is likewise permitted to any one who considers as unjust the decision declaring what expenses shall

*
¹ 54 & 55 V., c. 75, s. 1, 3, 4. A large number of the provisions of the Factory and Workshop Acts are enforced by the Factory Inspectors directly.

² 6 & 7 V., c. 68, s. 9.

³ 57 & 58 V., c. 57, s. 34.

⁴ *Ibid.*, s. 35.

⁵ 38 & 39 V., c. 55, s. 229.

be private improvement expenses, similar to our local assessments, or any decision regarding expenses that may be recovered in a summary manner.¹ The privilege has been extended so far as to include the case where the use of "a steam whistle or trumpet" for summoning or dismissing workmen or other persons has been permitted by the sanitary authority and any one considers himself prejudicially affected thereby.² Any owner or rate-payer who disputes the validity of the vote for the adoption of a resolution in reference to the formation of a local government district may apply to the Board for a decision.³ Appeal may also be taken concerning the formation of a hospital committee by the county council.⁴

In a second class of cases, where disputes arise and where there is no decision to appeal from, some department of the central government often acts as arbitrator or appoints a person to act. There are many instances in which other methods are provided, but under the public health acts when each of the two disputing parties is empowered to select an arbitrator and these two to select a third, to prevent disagreement the Local Government Board is authorized to appoint the umpire.⁵ In other instances, the Board is itself the deciding authority, as in disputes relative to the boundaries of urban county districts,⁶ the joint ownership of sewers,⁷ and the county in which a parish is considered as situated for the purposes of contribution under the Allotments Act.⁷ The Secretary of State, when a local authority withholds its approval of a plan or contract to be entered

¹ 38 & 39 V., c. 55, s. 268; 41 & 42 V., c. 25, s. 4. Cf. 25th Rep. of L. G. B., 1895-6, p. 119.

² 35 & 36 V., c. 61, s. 2. ³ 38 & 39 V., c. 55, s. 274. ⁴ 56 & 57 V., c. 58, s. 10.

⁵ 38 & 39 V., c. 55, s. 180. Other acts can be found which contain similar provisions. Cf. 50 & 51 V., c. 48, s. 3; 51 & 52 V., c. 41, s. 11, 33, 62, 63.

⁶ 38 & 39 V., c. 55, s. 278.

⁷ 50 & 51 V. c. 48, s. 14.

into with another authority under the Lunacy Act, may approve, amend or reject the proposition and compliance with his decision is obligatory.¹ Many other provisions of a similar nature exist in various acts, but they all vary in form more or less, and it is impossible to discover a general law of any value. Not many instances arise each year requiring the exercise of these powers, but I have been unable to find any objections to their exercise. They seem to have been satisfactory.

3. *Effects of Central Control*

The practical working of the more important provisions has been noted, but it is necessary to combine these various factors and ascertain the effects of the recent public health acts upon sanitary conditions. The earlier periods have been discussed from this point of view and need no further consideration except to call attention to the remarkable improvement since 1872, the slow progress previous to that date and to explain the contrast.

Although the death-rate is not an infallible index of sanitary conditions, it may be taken as a fairly accurate standard when the same country is considered and decennial periods are compared.² Comparing the periods, 1838—

¹ 53 V., c. 5, s. 254. Cf. also 54 & 55 V., c. 65, s. 13, 14.

² The chief factors that tend to make death-rates inaccurate standards may be briefly called to mind. Disease and sickness are often produced by unsanitary conditions, and although the constitution may be impaired, death may not result for years. The productive capability of a population may be lessened without a corresponding increase in the mortality. Upon the other hand there are certain causes which are only slightly influenced by sanitary conditions. The mortality due to these depends upon entirely distinct factors. The death-rate is usually higher among the ignorant than the educated, *ceteris paribus*. The improper care of children, the length of the working day, the kind of labor women and children are permitted to perform, the lack of moral restraints, the amount of wages, are important factors which are quite separate from sanitation. Even epidemics do not always affect communities in proportion to their disobedience of sanitary

1848, 1849-1872, and 1873-1893, the average annual death-rates are found to be 22.23, 22.34, and 19.99 per mille respectively, the rate for the single year 1893 being 19.2. To state it more vividly; if the death-rate for 1893 had been the same as that from 1838-1848, there would have been upwards of 90,000 more deaths during that year than there actually were.

A comparison of the death-rates of urban and rural districts also shows great decrease, and in both classes, but larger in the former.¹

DEATH-RATE PER 1000 POPULATION

	1851-60	1861-70	1871-80	1881-93	1893
Rural Districts	19.9	19.7	19.	17.5	17.4
Urban Districts	24.6	24.8	23.1	20.3	20.2

PROPORTION OF POPULATION

	1871	1881	1891
Rural Districts	43 per cent.	41 per cent.	36 per cent.
Urban Districts	57 "	59 "	64 "

It is also seen that the greater decrease in urban than in rural districts has taken place in spite of the fact that the former have increased in population much more rapidly than the latter, and therefore have been confronted with much more difficult problems.

The causes which produced this transformation are three. One is that urban districts have more generally undertaken

laws. Yet it is usually true that unsanitary conditions aggravate the injurious effects of these causes, and if long periods are chosen in order to eliminate minor disturbances, and, if the same country is considered, the effects due to changing industrial conditions, different sex and age distributions, and climatic influences may be obliterated. In such a case death-rates are fair indices of sanitary conditions.

¹ Unless other references are given, the statistics may all be found in the Reports of the Registrar General, from which these figures have been compiled. Similar statistics may be found in Newsholme, *The Elements of Vital Statistics*, and Farr, *Vital Statistics*.

works of sanitary improvements; another, which may be partially responsible for the former, is that the central administrative control actually exercised is greater over urban than rural districts; and the third is that there was greater need for improvement in urban districts and therefore greater possibility of improvement.

The decreased death-rate, the saving of 90,000 persons annually, has great economic importance, for the actual and direct effect of improved sanitation has been to increase the average duration of life, and this increment has enured to the advantage not of the very old or the extremely young, but to that of the middle aged, at the time when personal activity is near or at its height.¹ The youth who would have died before reaching an age of economic productivity are now saved until they are able to repay to some extent at least the expenditure of their early days when they were unable to labor. Those who would have reached the period of productivity have this period lengthened. The expectation of life at birth has been upon the average:²—

	MALES.	FEMALES.
1838-1854	39.91 yrs.	41.85 yrs.
1871-1880	41.35 "	44.62 "
1881-1890	43.66 "	47.18 "

It is very encouraging to learn that the gain between the first and second periods was 1.44 and 2.77 years respectively for males and females, and between the second and third was 2.31 and 2.56 years respectively, particularly when it is remembered that the periods considered were in the first case thirty years and in the second case ten years.

All causes of death are not equally affected by a change

¹ For discussion and proof, consult Vol. 37 of the Journal of the Statistical Society, London, *The Value of the Death-Rates as a Test of Sanitary Condition*, by N. A. Humphreys; also Supplement to the 55th Rep. of the Reg. Gen., pp. 9-20.

² Supplement to the 55th Rep. of the Reg. Gen.

in the sanitary conditions, and if it is desired to measure more accurately what has been accomplished in this direction, those causes must be selected which are directly affected. With this in mind the following table is most instructive:

DEATH-RATE PER 1000 PERSONS LIVING.¹

	1858-60	1861-65	1866-70	1871-75	1876-80	1881-85	1886-90	1893
All Causes.....	22.22	22.58	22.42	21.96	20.79	19.40	18.90	19.17
Fever,								
Typhus }								
Enteric }								
Continued }								
Diarrhœa,								
Dysentery	.777	.874	1.063	1.000	.832	.656	.667	.954
Phthisis	2.505	2.527	2.448	2.218	2.040	1.830	1.635	1.468

These figures show a great decrease in the very cases which are influenced by sanitary conditions, and almost all of the decrease in death-rates is to be found in the above table. There are other diseases where the mortality is not so great as formerly,² due probably to the increasing knowledge of the laws of hygiene and the better ability of medical science to cope with disease, but the diseases in which the most astonishing results are to be found are given above. In some other classes there is a slight *increase* in mortality, but it is only slight and does not begin to compare with the large decrease. Further, the localities in which improvements have been made are the very ones in which the rate of mortality has fallen off, *ceteris paribus*. High death-rates have usually been found to be due to removable sanitary defects. In 1881, it was proved upon investigation in several districts that the prevalence of typhoid fever was due to conditions which would be wholly removed by a thorough enforcement of the public health acts and a wise

¹ 55th Rep. of Reg. Gen., p. 42, 44.

² Especially small-pox, scarlet fever and diphtheria.

exercise of the powers thereby conferred,¹ and this experience is often duplicated.

With all these facts in mind, one must admit that sanitary conditions have greatly improved, that mortality has decreased considerably, especially in populous centers, and that this improvement is the cause of the decrease. This last statement is so universally admitted that it needs no argument to substantiate it.² But in this connection two facts which have been mentioned before should again be called to mind. The real gain is greater than appears by figures, which only show the numerical gain, for the amount of sickness prevented is not given in the table and indeed can hardly be estimated.³ We only know that where so many lives are actually saved, the amount of sickness prevented which does not end fatally must be very large. We see a reflection of this fact in increased longevity, but there is much sickness which does not injure the system materially, but which means great economic loss nevertheless. The other fact is that unless great advances had been made, the phenomenal growth of urban centres would have raised the rate of mortality to unheard-of figures.

The importance of the influence of central administrative control will not, however, be so readily admitted. But after what has been shown in the history of public health administration, it seems hardly possible to avoid giving this factor a prominent place. Nearly every system that could be thought of was tried, but not until a logical plan of central control was instituted and made to apply to all of England by the Acts of 1866, 1872 and subsequent years was there

¹ Rep. of L. G. B., S. P., 1881, Vol. 46, p. 103.

² See, for example, the Supplement to the 55th Annual Rep. of the Reg. Gen., 1893, pp. 7, 8. Also Newholme, *op. cit.*, p. 127.

³ It is sometimes estimated at five cases of illness to each death, but to know the real saving one must be more definite. How long are these illnesses, and how injurious?

any noticeable decrease in the death-rate, either relatively or absolutely, or great improvement in sanitation. Every one of the tables given in the last few pages shows it to be true that either a decline began about 1870, roughly speaking, or if there had been any decline previously, it was greatly accelerated about this date. The relation is not one of mere coincidence. Central control was a most potent factor. To those authorities honestly desiring efficient administration, the Local Government Board gave excellent advice and valuable information. The most approved methods were widely disseminated and effectively used. The stubborn and the apathetic were aroused to consciousness and spurred to action by the fear of being declared in default.¹ The effects of the plan were seen prior to 1870, but as the control only extended to part of the country the effects did not become widely apparent until the whole country was brought under the sway of the system. Of course, central control was not the *only* cause of the great improvement. Other influences played most important parts. The development of medical and sanitary science, increased prudence and knowledge among the laboring classes, and a greater appreciation of public duty and responsibility must not be forgotten. But he who undertakes to account for the attainment of the present position without giving central control a high and very important influence fails to regard impartially the facts of history.

The material is at hand, if it were thought necessary, to show that the same beneficial results attained in poor relief have been attained in this department as well. The great aid given through the publication and distribution of inform-

¹ Many instances might be given of beneficial results produced by treating authorities as in default, but one is sufficient. The rate in Lincoln fell from 22.7 in 1871-76, to 15.4 in 1887 and 1888, the population having increased 51% meanwhile. Monod, *op. cit.*, p. 435 N.

ation regarding every possible subject has been referred to frequently, and the benefits therefrom deserve extended praise. The opposition to efficient administration upon the part of authorities who were personally desirous of attaining it but who did not dare to go contrary to public opinion was prevented to a large extent, for the coercive power possessed by the central authorities removed much of the responsibility from the local officers. The system has been much more flexible, more capable of adapting itself to varying needs and demands than the old system of general laws and special acts with all their attending evils. The great increase in uniformity could also be shown, both in methods and results. All these results have been described in the previous chapter, and to follow the same outline here would be but to present new evidence and prove statements that would be admitted at once.

With this chapter the consideration of one form of central control ceases for the moment, although I shall return to it in the chapters upon Local Finance, Central Audit, and Special Legislation. The next form of control to be considered is based largely upon the giving of governmental aid provided certain conditions are complied with. The idea at the basis of the control described in the past two chapters has been mainly that of positive interference, but as will be seen the two forms have not been kept distinct, and although beginning at different places they have gradually intermingled until no field of local government can be said to represent one system of central control exclusively. The subject of Police will be discussed first, not because central control was adopted earlier here than in the case of Elementary Education, but because it represents one kind of control in a purer, more simple form.

CHAPTER IV

POLICE

THE establishment of police forces is of comparatively recent origin. Not until the fourth decade of this century were steps taken to construct what might be called a system, and it was twenty years later that central control was first introduced into actual administration. There are, it is true, some traces to be found in the earlier laws, but little advantage seems to have been taken of their existence. The most important provisions were those requiring that justices of the peace obtain the consent of the Secretary of State before increasing or decreasing the number of county constables,¹ that the appointment of chief constables,² the tables of fees and allowances for serving papers or the performance of occasional duties,³ the formation of police districts,⁴ and other minor acts be likewise approved; and those conferring upon the Secretary of State the power to make and issue rules for "the government, pay, clothing and accoutrements and necessaries" of the constables.⁵ Whether these powers were exercised I have been unable to ascertain definitely. It was affirmed in 1856 that chief constables were appointed without confirmation, and that other provisions were disregarded.⁶ One thing *is* certain, *viz*: that whatever may have been the control provided for in the statutes, no use was made of it. The nature of the acts rendered any other course

¹ 2 & 3 V., c. 93, s. 2.

² *Ibid.*, s. 4. Also 20 V., c. 2.

³ 3 & 4 V., c. 88, s. 24.

⁴ *Ibid.*, s. 17.

⁵ *Ibid.*, s. 27.

⁶ Hansard, *op. cit.*, Vol. 140, pp. 231, 2137.

impracticable. Whether they should be put in operation depended upon the attitude of the county or borough. Thus, had the Secretary of State undertaken to exert a control distasteful to a locality, he would have caused others to refuse to adopt the laws and thus escape the control. It was a question of half a loaf or no bread, and the localities were slow enough as it was in adopting the Acts of 1839 and 1840. These provisions exist to-day, but are not used to any great extent to control local affairs. They have been overshadowed by other methods.

The Parliamentary Commission of 1839, appointed to report upon the establishment of an efficient constabulary force stated as a summary of the evidence gathered, relative to the success of local government pure and simple in preserving the peace :

“ That a large proportion of the highways are left without any protection whatsoever from any constabulary or other civil force.

“ That on the highways of a large part of the country, commercial travelers and strangers who travel singly, otherwise than by public conveyances, and carry money about them, abstain from traveling after dark from fear of robbery and violence ; and that farmers return from market in company, from like fear, after dark. * * *

“ Having investigated the general causes of depredation, of vagrancy, and mendicancy, as developed by examinations of the previous lives of criminals or vagrants in the gaols, we find that in scarcely any cases is it ascribable to the pressure of unavoidable want or destitution ; and that in the great mass of cases it arises from the temptation of obtaining property with a less degree of labor than by regular industry, which they are enabled to do by the impunity occasioned by the absence of the proper constitutional protection of the subject.”¹

¹ S. P., 1839, Vol. 19, pp. 180, 181.

In the seventeen years between 1839 and 1856 not much improvement was made except in the larger cities, and in many of these the force was insufficient both as regards numbers and discipline. The less populous centers and country districts had done very little if anything. Many of the members of the constabulary followed various trades and occupations, viewing their official position as a matter of minor importance. Small riots at elections could not be put down and in many instances the aid promised the localities by the early statutes relative to police was refused because it was thought the needy locality had not done what it should to improve the condition of its police.¹ Twenty counties, including two Ridings in Yorkshire, had not adopted the Act of 3 and 4 Victoria²—the last important act relative to the police passed by Parliament. The county of Rutland had only one constable, who was supposed to oversee a population of 22,983.³ Cumberland was somewhat better, having *only* 5,333 under the guardianship of one officer. The larger boroughs, as Liverpool, Birmingham and Manchester, had fair systems, but the others were described as “nurseries of crime.” Stockport, with a population of 54,000, possessed fifteen constables; Ashton-under-line, 30,000, seven constables.⁴ But these figures are too favorable, for they represent the facts in the fall of 1856, after improvement had been made in order to obtain the government subsidy for the coming year. It must be remembered also that the individual and collective efficiency of these constables was much lower than that of the same number to-day.

The great underlying fault of legislation previous to 1856 was that it was permissive, that counties and boroughs were

¹ Report of Select Commission, S. P., 1852-3, Vol. 36.

² Sir George Gray in Hansard's *Debates*, III Series, Vol. 140, p. 231.

³ Report of Inspectors of the Constabulary, S. P., 1857-8, Vol. 47, p. 24.

⁴ Reports of Inspectors of the Constabulary, S. P., 1857-8, Vol. 47, pp. 231-2.

not obliged to adopt it. Hence two questions arose. Shall the adoption of the new law be made compulsory? If so, how shall compliance upon the part of the local authorities be guaranteed? The former was immediately answered in the affirmative. The latter was more difficult. The impracticability of a fixed ratio between the population and the number of constables was recognized. Different communities demanded varying forces, depending principally upon the nature of the population and the character of their occupations, and the efficiency of a force could not be measured by the number of constables. That the local authorities could not be trusted to organize and maintain an efficient constabulary had been proven by experience. The more populous centers might, but not so the majority of communities. The only refuge was in some plan of central control. In three departments—Poor Law, Education, Public Health—central control had already been adopted. The extreme centralization of the administration of poor relief was looked upon with disfavor. Just at this time the General Board of Health was under widespread condemnation. The system of government aid as exemplified in the field of Elementary Education seemed the best and only solution.

The Act of 1856 provided for three inspectors appointed by Her Majesty, to visit and enquire into the state of the police in every borough and county, and to report the same to the Secretary of State. Their salaries and allowances were to be fixed by the Commissioners of the Treasury.¹ If the Secretary of State certified that the police of any borough or county had been maintained in a state of efficiency in numbers and discipline for the past *year* ending September 29th, it was made lawful for the Treasury to pay out of the money voted by Parliament such a sum towards the expenses of such police as did not exceed one-fourth of the

¹ 19 & 20 V., c. 69, s. 15.

cost of pay and clothing.¹ Upon failure to secure such certificate no grant was to be made. To prevent small boroughs from maintaining a separate force, which experience had shown resulted only in increased expense and decreased efficiency, no subsidy was to be given to any borough having a population not exceeding 5,000 according to the last Parliamentary enumeration, which had not consolidated its police force with that of the county in which it was situated.² In case no agreement could be reached, the town council could report to the Secretary of State, and, after an inquiry, an Order in Council might be issued stating the terms and conditions.³ Certain other matters of less importance might also be dealt with by an Order in Council.⁴ Otherwise the police force was left under the control of county or borough authorities.

This brief analysis reveals two important ideas: government subsidies and central inspection. While the two are not inseparably connected, conditions at the time rendered the adoption of either one alone impossible. Opposition to central interference thus was too strong to permit central inspection. The simple grant of government aid would have secured no reform, and there was no reason why subsidies should be given unless conditions could be improved thereby. One great reason why many boroughs and counties did not possess an excellent force was the expense incurred. This objection could be overcome by Parliamentary grants. But if the state contributed towards the expenses of local administration, it had the right to see that the aid was properly ex-

¹ 19 & 20 V., c. 69, s. 16.

² *Ibid.*, s. 17. The number of boroughs having a population of over 5,000 was 64, 13 of which had already united their forces with those of the county. Hansard, *op. cit.*, Vol. 140, p. 232.

³ This agreement could be ended with the consent of the Secretary of State. 3 & 4 V., c. 88, s. 14, 15; 19 & 20 V., c. 69, s. 5, 20.

⁴ 19 & 20 V., 69, s. 4; 20 V., c. 2; 51 & 52 V., c. 41, s. 9.

pended, and if not, to withhold it. This could best be achieved by a plan of central inspection. Such were the arguments presented to those who opposed centralization. Those favoring some sort of central control accepted the Act because they recognized the influence of conditional grants in establishing it. The only opposition came from the smaller boroughs which felt their autonomy encroached upon by the requirement that all below 5,000 in population must unite their forces with those of the county to secure the grant.¹

The system established in 1856 has since met with but few changes. In 1874, the provision limiting governmental grants to one-fourth of the cost of pay and clothing was repealed,² leaving the Treasury to determine the sum, which has usually amounted to about 40 per cent. of the total cost of the police. This act was to remain in force only one year, but was annually re-enacted up to 1888, when the Local Government Act made its provisions permanent, a few changes having been introduced. The institution of the county council and the transfer to it of many financial powers and duties necessitated a transformation in the method of paying subsidies. Thereafter the county council was to be the disbursing agency. If the Secretary of State withheld a certificate of efficiency, the county council instead of transferring any sum to the credit of the county police fund or to the borough in default, was to pay one-half the cost of pay and clothing into Her Majesty's Exchequer in case a county, and into the general county fund in case a borough was in default.³ It was made obligatory upon all boroughs having less than 10,000 inhabitants in 1881 to unite their forces with the county constabulary.⁴

¹ Hansard, *op. cit.*, Vol. 140, pp. 2138-9.

² 37 & 38 V., c. 58, s. 2, 3.

³ 51 & 52 V., c. 41, s. 24, 25, 68.

⁴ *Ibid.*, s. 39. 50 boroughs were thereby affected, one of which possessed a police force of one constable. Arminjon, *op. cit.*, p. 155; Hobhouse & Fanshawe, *op. cit.*, p. 71.

Another slight change was made in 1877, when an act provided that no charter of incorporation was to be granted which authorized a separate police force, unless the borough had a population of 20,000 or over according to the last census.¹ Since the passage of these acts, no changes have been made except to include within the system of conditional grants any sums paid from receipts of customs and excises to pension funds.²

What have been the effects of the system? How does it actually operate? How far has it been a factor in bringing about the progress of the last forty years? These are important questions and demand consideration.

Upon September 29th, 1857, when the first grant was paid, there were eleven county establishments, ten cities and towns, "one district," and ninety-eight boroughs that received no portion of the public funds.³ Even in 1858, when ample time had been given for forces to have been established and maintained in a state of efficiency an entire year, there were four county establishments, seven towns and cities, "one district," and eighty-four boroughs that received no aid from the government.⁴ If we can depend upon previous reports, the number of inefficient forces for earlier years was very much larger, which proves the immediate effect of the Act. The complete figures for representative periods are these:

¹ 40 & 41 V., c. 69, s. 8; 45 & 46 V., c. 50, s. 5.

² 53 & 54 V., c. 45, s. 17; 56 & 57 V., c. 10.

³ *Judicial Statistics*, S. P., 1858, Vol. 57, pp. 3-4.

⁴ *Ibid.*, 1859, Vol. 26, pp. 3-8. Since the Act of 1856 did not effect the Metropolis, it should be omitted from all comparisons. Its police force is almost absolutely within the control of the Secretary of State.

Localities receiving no grants. ¹	1857	'58	'60	'65	'70	'75	'80	'85	'88
Number of Boroughs	98	84	73	58	54	38	32	25	22
“ “ Cities and Towns	10	7	2	1	1				
“ “ County Establishments	11	4	2	....	1				
“ “ Miscellaneous	1	1	1						

This table shows that until 1865 the number decreased quite rapidly, for the next ten years slightly, and from 1875 on, quite rapidly again, but not so rapidly as previous to 1865. The sudden decrease at first was due to the great desire to secure the grants. One-fourth the cost of pay and clothing was no small sum, and lowered very materially the amount to be raised by rates. Apathy and indifference were overcome, and as soon as it became evident that aid could be secured only by maintaining an efficient force, many fell into line. By 1865, most of the localities that could be reached at all had been. In the remainder, the local authorities were so apathetic, or so opposed to union with the county, or central inspection, that the grant could not arouse them or overcome the opposition. The unusual decrease between 1870 and 1875 was caused by the repeal of the statutory limit—one-fourth—and the increase of the amount by the Treasury to almost one-half.² The inducement to measure up to the standards of the inspectors thus became greater, and many localities yielded. After 1875, the work went steadily on until only twenty-two boroughs of all those in

¹ *Judicial Statistics*, S. P., 1858, Vol. 57, pp. 3-4.

1859, Vol. 26, pp. 3-8. 1861, Vol. 60, pp. 1-4.

1866, Vol. 68, pp. 1-4. 1871, Vol. 64, pp. 1-4.

1876, Vol. 79, pp. 1-4. 1881, Vol. 95, pp. 1-4.

1886, Vol. 72, pp. 1-4. 1889, Vol. 85, pp. 1-4.

² In 1873, the percentage of the total cost paid from subsidies was 20.4 in boroughs and 20.8 in counties. In 1875, the figures were 44.1 and 39.9 respectively; in 1888, 45 and 41. *Vide Judicial Statistics*, S. P., 1874, Vol. 71, p. 7; *Ibid.*, 1879, Vol. 79, p. 7; *Ibid.*, 1889, Vol. 85, p. 7.

England and Wales (the Metropolis excepted) were not receiving grants, and of these at least nineteen were disqualified because having a population of less than 5,000 and maintaining separate forces.¹ Since 1888, one or two a year are all that have been reported inefficient.²

The question at once arises: Does this indicate that there has been an increase in efficiency as referred to an absolute standard, or has the standard of efficiency been lowered? Not many facts bearing *directly* upon the first part of the question can be found. Comparing the numerical strength of forces in 1856 and 1893, we find that whereas in '56 there were 1,784 persons to one constable, in '93 there were 971.³ While the population has increased 46 per cent., the police force has increased 168 per cent. It is true that numbers are not necessarily a true index of efficiency, but when one recollects that the personal efficiency of the men and of every department is universally admitted to have wonderfully increased, there is no chance to deny that a great improvement has resulted when referred to an unchanging standard.

To maintain that the standard held in mind by the inspectors has been raised, lowered or kept absolutely the same is more difficult. The following table may help to answer the question:

¹ Report of Inspectors, S. P., 1890, Vol. 36, pp. 6, 126, 226.

² Cf. Report of Inspectors, S. P., 1890-1, Vol. 42, p. 103.

³ The census returns of 1851 and 1891 are taken as a basis. No specific references can be given for these figures, but they are all based upon returns made by the inspectors, and have been checked with others as far as possible to prevent errors.

NUMBER OF INHABITANTS TO ONE CONSTABLE IN BOROUGHs OF A POPULATION OF 5,000 OR OVER.¹

		1857	1871	1881	1891
Boroughs Reported Inefficient:	{ (1) Highest Ratio	3282	7007	6441	
	{ (2) Lowest Ratio	900	925	1093	
" " Efficient:	{ (3) Highest Ratio	1743	2131	1205	1221
	{ (4) Lowest Ratio	393	476	407	400

The figures in (1) are of little practical importance at this point of the discussion; they merely indicate how bad were conditions in some localities. Likewise those of (4) are of little interest, except to show how effective some forces have been. From those of (2) the conclusion would be drawn—if nothing further was known—that the standard of efficiency had remained about the same, perhaps being lowered somewhat. But when it is learned that a force of ten men, for example, was much more efficient individually and collectively in 1891 than the same number of men in 1857, a different conclusion is reached. The improvement has been so great that comparison is needless, and it will be admitted at once that the standard of efficiency has been raised. The figures in (3) are much more important than any of the others, for in all probability they come nearer indicating where the line is drawn. While there have been many places far above the standard of efficiency, there also have been many that maintained an efficient force simply to secure the grant. In these instances the object has been to come just as close to the line as possible without overstepping it. The inspectors have often reported that "some forces are kept only just strong enough to pass the test of efficiency,"² and these are the ones represented in (3).

¹ Compiled from Reports of Inspectors.

² Cf. Reports of Inspectors, S. P., 1865, Vol. 45, p. 6; *Ibid.*, 1881, Vol. 51, p. 127.

In this instance we have a positive decrease in the ratio, which coupled with increased personal efficiency proves that the inspectors have not been satisfied with previous standards, but have kept steadily advancing. Forces reported as efficient did not necessarily continue to be so reported, and unless the local authorities kept pace with the ideas of the inspectors, a statement of inefficiency was filed and the grant withheld. Shropshire failed to be reported efficient in 1874, although it had been previously, and the following year sought to enter the fold again, having made the changes required.¹ The borough of Glossop had the same experience in 1882.² Colchester was similarly dealt with as late as 1893.³ Sheffield was somewhat stubborn, and three years were spent in bringing it back into line. These instances and many others that might be given declare unmistakably that the granting of a certificate has not been a matter of form, but that the inspectors have had a standard above what many localities had attained, that unless they conformed to it they were reported inefficient, and that as they became more able to equip and maintain better forces they were required to do so. Progress through gradual evolution, is the motto which has been followed with sincerity.

But what of the present system? Is it not merely a form through which the localities must pass to receive aid? Is not a certificate granted as a matter of course without any force being brought to bear by the central government? Only partially can these questions be answered affirmatively. It is hardly true to say that if all laws were to remain unchanged except that all features of central control should be removed, the present efficiency of the police would be preserved and the exigencies of the future met and solved as

¹ Report of Inspectors, S. P., 1875, Vol. 36, pp. 5, 60.

² *Ibid.*, 1883, Vol. 31, p. 130.

³ *Ibid.*, 1894, Vol. 42, p. 5.

promptly as they have been in the past. Yet this statement would be the inevitable result of an unqualified answer in the affirmative. But it is also true that at no time in the past has there been so little need of central control as at present. Apathy and indifference which once so completely dominated the borough and county authorities have almost disappeared. The sense of duty and responsibility has greatly increased. Consequently, the influence of central control is not largely felt. It might almost be said, there is no influence. But not all localities are in this enviable position. There are still quite a number which are influenced by the possibility that a certificate *may* be refused. That the refusal of the certificate in case of inefficiency is not merely possible but probable is a further stimulus. It is true that not many instances have occurred during the past few years where inefficiency has been reported,¹ but not many are needed to prove the probability of a strict exercise. That little use is made of the power does not indicate that it has no influence. Its effectiveness may be great although it is infrequently exercised, and this is the status of central control in the field of local police. Quite fortunate is it that such a stage has been reached. The justification of the continuance of the plan lies in the fact that it guarantees constabulary forces commensurate with the demands made upon them, that communities lacking in public interest and responsibility will be induced to strive towards a higher standard. Even a small number of authorities thus stimulated furnishes sufficient justification in the face of the few objections that can be raised.

The relations between the Secretary of State and the inspectors are about the same as those between the Education Department and its inspectors, or between the Local Gov-

¹ The last report of the L. G. B., 1895-6, contains one instance where a certificate of efficiency was withheld. *Vide*, p. 22.

ernment Board and the district auditors and inspectors. All fields show the same experience. When any department of the central government possesses complete power over the appointment, removal, salaries and duties of its agents, they become independent of local prejudices and influences, and subservient to the wishes of the central authority. If rigid enforcement of law is desired, they obey. If lax administration is winked at, they permit it, but fortunately this has been found to be rare. All subordinates as a rule have been men of ability, fully competent to perform the tasks assigned them. The nature of their work demands such men, for the central department must depend upon them for its information; they must be its five senses. When few and simple facts are desired, their work is largely ministerial, and the department may reserve to itself the work of drawing conclusions and of rendering decisions. But when the facts are numerous, varied, difficult to describe, having no statistical measure, the central department must leave to its agents the work of drawing the conclusions as well as gathering the information. The opportunity to appeal usually prevents any injustice.

Such is the position of the inspectors of the constabulary. They are not amenable to local or personal influences, but truthfully state the facts. If a force does not measure up to the standard, it is so reported. If there are extenuating circumstances, these are stated, but the exercise of further discretionary power is left to the Secretary of State. Whether the report of the inspector shall be followed, the Secretary alone decides. The facts show that there has been no such use made of the power to reverse the decision of the inspectors as in the case of the Local Government Board relative to audit. Apropos of this statement it may be well to compare the number of boroughs reported as not entitled to receive grants with those that actually did not receive them.

Boroughs. ¹	1857	'58	'60	'65	'70	'75	'80	'85	'88
Not entitled to aid because of lack of efficiency, as reported by the inspector, or because of less population than 5,000 while still supporting separate forces.....	93	81	69	55	47	36	31	24	20
Not receiving aid according to Judicial Statistics.....	98	84	73	58	54	38	32	25	22

When drawing any conclusions from this table, a few facts must be borne in mind. The table as given does not exactly apply to the question at issue. In a very few instances a borough has been counted as *entitled* to receive aid when it had not maintained an efficient force for an entire year. Thus a few figures in the first row may possibly be smaller than they should be. Whether those given are affected, I am unable to say, but it would be only slightly if at all. Allowance also must be made for a few very rare instances (less in number than the above) where a borough did not receive aid because of some legal technicality or failure to apply for the grant, although it had or might have had a certificate of efficiency. This might increase very slightly some of the figures in the second row. Again, those boroughs having a population of less than 5,000 but maintaining separate forces which could not therefore have possibly been given aid (except illegally) are included in both rows. But this is a constant number, and although varying from column to column does not vary from row to row. Thus the difference between rows would not be altered although percentages would. Having made these corrections, which would diminish the differences between the two rows, it is evident that practically the Secretary of State has followed closely the decisions of the inspectors, with sufficient leeway to prevent injustice.

¹ Compiled from *Judicial Statistics*, S. P., for the corresponding years.

It seems hardly necessary after what has been said to present further evidence to show the superiority of present administration over that prior to 1856. No one denies that great progress has been made, and its extent has been brought out in striking contrast by previous statements and tables. Without any further attempt to describe the evolution, I shall proceed to ascertain to what extent central control, as exercised through grants and inspection, has produced this improvement.

Examining the Act of 1856, we may divide it for the present moment into two parts, separating all the provisions directly involving central control from those that do not. Parliamentary grants belong to the former, for, as I have shown, they were adopted as part of the scheme, and without central inspection would have been ineffective. There might have been certain localities that would have been, and indeed were, stimulated to activity simply by government aid, but it seems by far the more probable that in the vast majority of cases it would have been applied to lowering rates instead of to increasing efficiency. Especially does this seem true when the extreme indifference and apathy which so widely prevailed is called to mind. The lack of interest was too strong to be overcome by mere gifts with no conditions attached. If it required seventeen years from the time the conditions were actually portrayed and the remedy prescribed¹ until a statute embodying these recommendations was passed, how many more years would have been required to arouse interest by a purely moral and educational process? In the Parliamentary Report of 1839 it was conclusively shown that the public welfare was endangered, that life and property were unprotected, and that lawlessness openly

¹ The Report of the Constabulary Force Commissioners in 1839 outlined a bill which contained all the important features of the Act of 1856. It is a most valuable document upon this subject. S. P., 1839, Vol. 19, p. 184 especially.

stalked about, yet officials slumbered on with no one to disturb them.

But to return to the consideration of the second part of the law of 1856, one finds but one provision which had much effect in producing reforms, *viz.*: that requiring boroughs of less than 5,000 inhabitants to consolidate their forces with those of the county or forfeit the grant. It did have some effect but not to the extent supposed. In one of the three districts into which England and Wales is divided, there were in 1851 twenty-eight boroughs within the 5,000 limit. In 1888, thirteen had refused to consolidate,¹ not because they did not desire the grant, but because central inspection was too much of a reality, and the grant would hardly counter-balance the increased expenditure. But suppose consolidation was due to this provision, the accompanying improvement was not large, and we are forced to the conclusion that as far as the Act of 1856 was the cause of the subsequent reform in administration, the real cause was the plan of central control.

It may be claimed by some who believe little in the effectiveness of any legislative enactment in producing better administration that this Act had little or no effect, that the discussion aroused was the leavening force, that the natural course of events was progressive, that it would have come under any statute. There is some truth in these assertions. Discussion was a potent factor in arousing men and authorities to a realization of their duties and responsibilities, but if this be the vital principle, why was not the reform begun in 1839 and 1840? As to the second assertion, it will be granted that the power to utilize a poor system to better

¹ Allowance must be made for a decrease in the original number due to an increase in population, which would place some beyond the limit, and thus be permitted to maintain separate forces. *Vide* Reports of Inspectors, S. P. (20), 1857-8, Vol. 47, p. 84; *Ibid.*, 1871, Vol. 28, p. 134; 1876, Vol. 34, p. 5; 1889, Vol. 40, pp. 230-317.

advantage has been growing. Undoubtedly the increasing capability to govern explains to some degree the progress. As to the third claim, that other solutions *would* have been found, I have only to say that it does not contradict to the slightest degree any statements as to how the problem *was* actually solved. It is irrelevant.

But allowing for all these causes, there still remains a large residuum unaccounted for; more than half the field. At this point central control asserts its importance, laying claim to consideration as the chief cause upon evidence presented in the earlier part of this chapter. What does the sudden decrease in the number of localities receiving no aid from the government, which occurs just at the time the aid is increased in amount, mean, except that the desire for the subsidy even subject to conditions is too strong to be withstood? What mean the statements that Bridgnorth,¹ Rutland,² Berwick-upon-Tweed,³ Glossop,⁴ Congleton,⁵ Stratford-on-Avon,⁶ and others increased their forces because large grants were offered upon conditions which had to be fulfilled? What does it mean when few exceptions can be found, unless it is that central supervision was the most important factor? Do not the facts presented, which show the prevalent reluctance with which county after county, borough after borough, yielded to the stern will of the central department under a system offering large inducements, warrant the conclusion that the main cause of the wonderful improvement was the system of central administrative control?

¹ Rep. of Inspectors, S. P., 1871, Vol. 28, p. 26.

² *Ibid.*, 1863, Vol. 50, p. 38.

³ *Ibid.*, 1875, Vol. 36, p. 172.

⁴ *Ibid.*, p. 145.

⁵ *Ibid.*, 1890-1, Vol. 42, p. 103.

⁶ *Ibid.*, 1881, Vol. 51, p. 5.

CHAPTER V

ELEMENTARY EDUCATION

ALTHOUGH it may be impossible to define with precision the term, Elementary Education, it is both possible and necessary to understand in a general way what portion of the educational field it indicates. If one searches the statutes for a legal definition, he will find little of value. The Act of 1870 states some of the qualifications of a "public elementary school," and in a general way defines it as a school where no religious observance or belief is required as a condition of admittance, one which is open at all times to the inspection of Her Majesty's inspectors, and which is conducted in accordance with the conditions which the Education Department requires to be fulfilled before any portion of the annual Parliamentary grant can be secured.¹ To ascertain what are these conditions, the Code of the Department must be examined. From this book of 140 pages, it is gleaned that the adjective "elementary" has about the same meaning in England as in this country. Perhaps we use "primary" more frequently to denote the same idea.

The line between elementary and secondary education is not, however, clearly drawn in England; consequently schools which, according to the legal definition, would be classed as elementary, do not infrequently give some instruction which is properly secondary. The list of studies, for

¹ 33 & 34 Vict., c. 75, s. 7. The qualification laid down in section three of this Act, *viz.*, that "the ordinary payments in respect of the instruction from each scholar do not exceed nine pence a week" has become of little force since the Act of 1891, c. 56, which practically abolished nearly all fees.

instruction in which grants may be secured from the central government provided they are properly taught, would seem to magnify the amount of secondary instruction given; but when allowance is made for the fact that the more advanced subjects are not usually taught,¹ and that but one per cent. of the scholars are above fourteen years of age,² it is seen that the actual amount of secondary instruction given in the primary schools is small. The tendency has been to extend the system of Parliamentary grants, but as yet secondary education has remained in the hands of private or endowed schools, over which the central government has little supervision. The "public schools," being managed by private bodies, are also outside of central control. The University Colleges which share in the grant of £15,000 annually made by Parliament are only very indirectly connected with the Education Department—the central authority.³ Training colleges for teachers are more closely affiliated, but these of course are not numerous.⁴

The transfer of the Science and Art Department and of the Army and Navy Schools to the Education Department in 1853 has given the latter control over matters somewhat outside the sphere of elementary education, but these will be passed over for obvious reasons. The Science and Art Department is operated upon the same principles as other departments, and its name indicates fairly well its functions. The Army and Navy Schools are excluded by the limitations of the study. Their administration is completely centralized. Certain matters relating to Technical Education have also been placed under the supervision of the Education Department, but, comparatively, these are unimportant and may be omitted.⁵ Further, all schemes framed by the Charity Com-

¹ Cf. Rep. of the Committee of Council on Education, 1895-96, pp. 20-22.

² *Ibid.*, 13.

³ *Ibid.*, 10.

⁴ *Ibid.*, 10, 14, 24.

⁵ *Vide* 52 & 53 V., c. 26; 54 & 55 V., c. 4.

missioners under the Endowed Schools Acts must be submitted to the Committee of Council on Education, which may approve or remit them.¹ Another central authority, the Local Government Board, has large control over schools for pauper children, but the number of children is small, decreasing yearly,² and does not deserve further notice. Industrial Schools, which partake of the character of reformatories and prisons more than public schools, are supervised by the Secretary of State.³

As the discussion proceeds, the exact limitations of the portion of the educational field under the supervision of the central administrative authority will appear; but casting aside some few exceptions, it may be said that it is nearly the same as is comprehended under the term, "public elementary education," in the United States.

1. History of the Period Prior to 1870

Education, like the relief of the poor, was for centuries in the hands of the Church. The earliest schools were almost invariably connected with the monasteries and supported by them. With their overthrow and the coming of the Reformation, a change was made necessary, and again the Church assisted by private individuals stepped into the breach. The state remained inactive. Political science had not reached the stage of development where it is considered the duty of the state to help educate its members, and as voluntary organizations seemed willing to make all necessary provision there was no need of its acting. As denominations multiplied, each strove to maintain its own schools, to educate its own children and to increase its membership through this agency.

¹ During 1895, 38 schemes were submitted. *Vide* Report of Com., 1896, p. 9.

² The average daily number attending 1894-5 was 24,475. Rep. of L. G. B., 1896, p. 87.

³ *Vide* 29 & 30 V., c. 118.

When, in the early part of this century, it became evident that it was the duty of the state to increase educational facilities, it was brought face to face with a serious problem. Private enterprise had proven inadequate. Educational advantages, what few there were, were not open to all. The various sects were extremely jealous of one another, and opposed with great vehemence any plan that even appeared to give any advantage to one or a few. Whenever any legislative action was proposed, the Established Church would not give its support unless it received advantages that were denied to others. The Dissenters opposed with equal vigor all plans which did not place them upon an equality with their opponents. Bills were constantly introduced into Parliament, but not until 1870 could an agreement be effected and a comprehensive act be passed. In the half century that preceded this date, not a year passed without a discussion of the question, but from first to last all proposals were shipwrecked upon the rock of religious controversy.¹

The first Factory Act passed by Parliament contained a section requiring the apprentices in mills and factories to be instructed in reading, writing and arithmetic every working day for the first four years of apprenticeship.² Two visitors were to be appointed by the adjacent justices of the peace to see that it was enforced.³ Although the Act was of only a limited application, it is interesting to note that the cause of its utter failure was the method of enforcement. The justices and visitors proved to be influenced more by local prejudices and sentiments than by a desire to enforce the law. Thus, when the Act of 1833 was passed modifying and extending the Factory Laws, it made a radical change, expressly stating: "It appears that the provisions of the said Act with

¹ Cf. Adams, *History of the Elementary School Contest in England*.

² 42 Geo. III., c. 73, s. 6.

³ *Ibid.*, s. 9 to 15.

relation to the appointment of inspectors were not duly carried into execution, and that the laws for the regulation of the labor of children in factories have been evaded, partly in consequence of the want of the appointment of proper visitors or officers whose special duty it was to enforce their execution."¹ The reaction was so strong that the inspectors appointed by the Crown were given large powers of inspection and examination of factories and employees,² power to make regulations and to enforce attendance at school,³ and even many of the purely judicial powers held by the justices of peace.⁴ But even under this rigid system there were still not a few instances where the law could not be enforced because the same persons were mill-owners, magistrates and opponents to all factory legislation. Yet there was great improvement due to the introduction of government inspectors, and the failure to accomplish more was due to no fault of theirs.⁵

It was soon found, however, that the union of administrative and judicial functions did not work well. Accordingly in 1844, the power of the inspectors to act as magistrates was repealed and a new administrative department, that of the Factory Inspectors, created.⁶ It is impossible to mention all the Factory Acts and note how the system expanded step by step, even as far as they affect Elementary Education.⁷ Suffice it to say that gradually each occupation has been included, the powers of the inspectors extended, and the efficiency of the system increased. The justices have sometimes stood in the way of strict enforcement of the law,⁸ but the

¹ 3 & 4 William IV., c. 103, s. 17. Cf. Alfred, *The History of the Factory Movement*, pp. 104, 5, 8, 9.

² *Ibid.*, s. 17, 19 to 27.

³ *Ibid.*, 18, 20.

⁴ *Ibid.*, 33, 34, 38 *et seq.*

⁵ Alfred, *op. cit.*, pp. 105, 121, 125.

⁶ 7 & 8 V., c. 15, s. 2, 5, *et seq.*

⁷ For a complete discussion, consult Von Plener, *Die Englische Fabrikgesetzgebung*, and Redgrave, *Factory and Workshop Acts*.

⁸ Von Plener, *op. cit.*, pp. 38-40.

danger from this source has been overcome. At present the duty of seeing that the law is enforced is imposed upon the central government, and so far as the law deals with the education of working children, it seems to be quite well enforced.

An interesting incident occurred in the history of the Factory Laws which throws much light upon the question of central control and its proper sphere. In 1867, it was thought best to apply the Factory Acts to workshops, but the opposition to centralization being so strong, it was decided to place the duty of enforcing the law upon local authorities, which were borough councils, local boards, improvement commissioners, or vestries, as the case might be.¹ Side by side with this plan was that of central inspection and enforcement. For four years both plans remained in force, and this short period was quite long enough to establish the superiority of the latter. Many of the town councils explicitly resolved not to interfere, and many more silently ignored the law.² It became "a dead letter throughout nearly the whole country."³ In 1871, the power was transferred to the government inspectors,⁴ who had no difficulty in carrying the law into effect, and with this experiment all attempts to depend upon local authorities or their appointees ceased. Considering the whole scope of factory legislation, not merely in its relation to education, and the most excellent results attending, Von Plener has said: "But all its good effects could only result from a strict and efficient system of government inspection."⁵

Whatever schools were founded under these various Acts have now been consolidated with the public elementary

¹ 30 & 31 V., c. 146, s. 9, 13.

² Jevons, *The Relation of the State to Labour*, p. 59.

³ Von Plener, *op. cit.*, p. 88 *et seq.* Also Hansard, *op. cit.*, Vol. 207, pp. 1334-5; Vol. 208, p. 1735.

⁴ 34 & 35 V., c. 104, s. 3.

⁵ *Op. cit.*, pp. 115 *et seq.*

schools or maintained as voluntary schools, and therefore need no separate treatment.

Thus far we have considered only the relation of the central to the local governments through the indirect avenue of the Factory Acts, which have undertaken to deal only with the children employed in factories and workshops. No definite system of education was provided for; the purpose of the Factory Acts was rather to prevent children from wholly neglecting their schooling to earn wages. The providing of schools for them to attend and compulsory education was part of another problem, the general problem of education, which I shall now proceed to examine.

Although a Parliamentary Commission had declared that education was a matter of vital concern to the state,¹ it was not until the causes, which in the fourth decade led to reform in other directions, made the subject appear more important, that a beginning was made in a very unexpected way. Deeming it wise to assist private enterprise, the government inserted the following item in the appropriation bill for 1833: "£20,000 for Erection of School Houses in Great Britain."² The following year the same amount was appropriated for England alone,³ and no change was made in this figure until 1839. The conditions upon which these grants were to be distributed were determined by the Treasury, which soon enumerated the following: No contribution was to be expended for any purpose except the erection of school-houses, nor until an equal sum had actually been received from voluntary contributions. Applicants were to submit their accounts for audit, and preference would be given to populous places in the allotment of grants.⁴ No

¹ Lord Brougham's Commission, 1818. S. P., 1888, Vol. 35, p. 4.

² 3 & 4 Wm. IV., c. 96, s. 17.

³ 4 & 5 Wm. IV., c. 84, s. 17.

⁴ S. P. (158), 1854-5, Vol. 41, p. 4.

one supposed that this plan would continue long. It was only tentative, introduced to fill the gap until a comprehensive system could be formulated and agreed upon. No one dreamed that for nearly forty years this annual grant by Parliament would be the foundation of whatever system there was, and that upon it a lofty superstructure would be raised.

After six years had passed under this very primitive and unsystematic arrangement, the conclusion was reached that it would be far better to provide a special authority to supervise the distribution and application of these grants. An Order in Council was issued substituting a special committee of the Privy Council for the Treasury Department, and providing for a staff of officers and inspectors.¹ The appropriation was increased to £30,000,² which amount was further increased until it reached the high-water mark of £836,920 in 1859.³

At the very beginning, the Committee laid down the following principles in addition to those previously set forth by the Commissioners of the Treasury. Strict neutrality as between religious sects was to be observed, and to avoid antagonizing all denominations, the Bible was to be read in all schools aided by the government, but parents might withdraw their children from such instruction. The most important principle was that obliging all schools receiving any portion of the grant to permit inspection by the officers of the Department.⁴ The inspectors were instructed not to interfere in the slightest degree with the management of schools, nor even to press upon the teachers or managers

¹ S. P., 1839, Vol. 41, pp. 255, 265. The formation of the Board of Trade was probably the constitutional precedent here followed.

² 2 & 3 V., c. 89, s. 17.

³ S. P., 1861, Vol. 21, pt. 1, p. 20.

⁴ S. P., 1854-5, Vol. 41, pp. 3, 4, 28. All the minutes of the Department from 1839 to 1855 are collected and arranged chronologically in this volume.

any advice or information which they did not seem willing to receive. Their duty was to consist in offering to all the benefits of their superior knowledge and experience, in securing information for the central government and all others interested, and in diffusing methods which had proven successful. Government inspection was not to be used as a means to control or restrain, but to encourage and to give the Committee the information it must have regarding grants. Circulars relating to methods of instruction were prepared and distributed. Plans and specifications as to the proper construction of school-houses, the materials to be used, the lighting, heating and ventilation were drafted. But every feature that savored of coercion by the central government was carefully avoided.¹

To comprehend the wisdom of such a course and of subsequent changes, one must keep clearly in mind existing conditions. Although religious disputes kept Parliament from passing a general act, it was easy to insert a grant in the annual appropriation bill, and as long as opposition was not aroused, the Education Department would practically be left to administer this grant as it chose. But although no law could be enacted, it was not a difficult matter to arouse enmity. Then, as always, it was much easier to find a majority which would agree that a certain solution *was not* than that it *was* the proper one. The result was that the Committee had to choose between radical measures with the probability that its life would be short, and very conservative principles with continued usefulness. The fact that in 1839 the appropriation for education passed the House of Commons by a majority of only two,² shows how critical was

¹Minutes of the Committee of the Privy Council on Education, S. P., 1840, Vol. 20, pp. 1-35. Also a *Return showing instructions issued to the Inspectors*..... S. P., 1851, Vol. 43, p. 55.

²Vote was 275 to 273. Hansard, *op. cit.*, Vol. 48, p. 793.

the situation. It was extremely necessary that the department advance slowly, only extending its powers when it knew it had the support of the majority. The close adherence to this principle and its great success will become evident as the development of the system is studied and its results seen.

The first important changes in the attitude of the Department were made in 1846, when minutes were passed requiring a report to be made by the inspector as to the fitness of the teacher, the equipment and organization of the school, and the probable continuance of private contributions. Upon these facts, the amount of the school grant largely depended. Pupil teachers and stipendiary monitors were subjected to more rigid regulations. If an inspector certified at the close of the year that he was satisfied with an examination given them, and if the papers were also satisfactory to the Committee, stipends were paid them varying with the time of service. The highest was £20 and the lowest £5 per year. If proficiency in mechanical or domestic arts was proven, the *master* was to receive a gratuity, in addition to a fixed amount for every pupil teacher and stipendiary monitor under his charge. But over all, like the sword of Damocles, hung the provision that if the work was not approved by the inspector, all payments could be withdrawn. To increase the efficiency of teachers, normal schools were encouraged and rewards given to teachers of ability.¹ An "augmentation grant" varying from 15 to 30£ according to the length of training was given to those who had been trained in these schools.² The following year the Department ordered a list of approved text books and maps to be prepared, and when a school adopted those upon this list, a grant of 2s. or 2s. 6d. for every scholar was made.³ In 1853, "capitation

¹ The establishment of a normal school was proposed in 1839, but the Committee was obliged to give it up because of the great opposition.

² S. P., 1854-5, Vol. 41, pp. 11-20.

³ *Ibid.*, 33-4.

grants" were introduced, which were to be paid the managers of schools in rural districts and boroughs of less than 5,000 inhabitants¹ for every scholar that attended 176 days, *provided* a certificated teacher was in charge, that at least three-fourths of the children were presented to the inspector for examination, and that about three times the amount of the grant was secured from other sources.² Three years later, the office of Vice-President of the Committee of the Privy Council on Education was established, thereby creating a Minister responsible³ to the House of Commons for the disbursement of the rapidly increasing grant.⁴

The fundamental principle at the basis of these regulations was that payments should be made to schools only upon the condition that a certain kind and amount of educational machinery was possessed. There were grants for teachers, books, maps, and school-houses, but none that depended upon the effectiveness of the instruction or the use of this machinery. Scholars had to be presented to the inspector for examination in order to obtain the capitation grants, but whether they showed marked ability or dense ignorance made little difference as far as the grants were concerned, and grants were what the teachers and managers most desired.

The rapid increase of Parliamentary grants began to excite grave apprehensions, and the Department felt that retrenchment must be made in some direction. It was decided to withhold further aid for the erection of normal schools and to reduce by three-eighths all grants for the construction of elementary schools.⁵ A more effective method was adopted two years later.

¹ This restriction was removed in 1855-6. S. P., 1858, Vol. 46, pp. 3, 4.

² S. P., 1854-5, Vol. 41, p. 53. The largest capitation grant paid to any school during the year 1858 was £69 6s. S. P. (145), 1858, Vol. 46.

³ Cf. Anson, *The Law and Custom of the Constitution*, ii, p. 196.

⁴ 19 & 20 V., c. 116. The grant rose in just 20 years from £30,000 to £836,920.

⁵ S. P., 1860, Vol. 54, pp. 11, 25.

In 1861, the Parliamentary Commission appointed in 1858 made a most excellent report, pointing out among other things that the apportionment of grants according to the efficiency of instruction would be much more equitable and effective in raising the standard.¹ When the question of revising the minutes, which had been formed into a Code, came up in 1862, many of the recommendations of this Commission were incorporated. Payments were no longer to be made to teachers directly, but to the managers. The conditions upon which grants were awarded were made more rigid by requiring that the school be held in approved premises and under the charge of a certificated teacher, that the children have a certain minimum number of attendances—200—and *that they pass an examination in reading, writing and arithmetic given by the inspector.*² A certain sum—2s. 8d.—was to be given for each scholar who succeeded in passing in any one of these branches, and if he was so fortunate as to pass in all, the managers were entitled to 8s.³

This was certainly the introduction of a new principle, and attracted so much attention and aroused so much discussion, that it was given a specific title, "payment by results." While this name might be criticized in that the principle of the former Code was also payment by results, yet it does represent a different idea. It would be more accurate to say a change had been made in what results should be considered and how they should be compared. That the state should have the power of determining the conditions upon which it should give aid was always admitted. That the amount should be apportioned according to the use made of it was also conceded. What the Code of 1862 actually did,

¹ S. P., 1861, Vol. 21, particularly pp. 328 *et seq.*

² S. P., 1862, Vol. 41; Code, s. 40, 53.

³ These were not the only grants received, but the others were smaller. Infant schools received less.

was to adopt individual examination as the principal method of determining whether the proper use was being made of it. That this was the natural development, although perhaps a little too suddenly introduced, can not be denied. The question had come to be one not of form but of efficiency, and how could this be decided except by examinations?

A storm of objections followed the announcement of the Revised Code and compelled its modification in some respects, but the fundamental idea was not sacrificed. The radical elements rejected it because it did not provide for a national system. The conservatives opposed it as a breach of contract, a sudden departure from the past. But as no course of action could be agreed upon, the Department triumphed and continued to increase its control and supervision over private interests.

The most noticeable and readily apparent effect of the Revised Code was the decline of the Parliamentary grant from £813,441 in 1861 to £636,806 in 1865.¹ It may partially be accounted for by the reduction in building grants and the discontinuance of the grants for books and apparatus, but by far the greater portion was due to the operation of the Code. Mr. Lowe, then Vice-President of the Committee on Education, declared: "If the system is costly, it shall be efficient; if inefficient, it shall be cheap,"² and this declaration was followed.

That there were defects in the Code, hardly needs to be stated, and from year to year minutes were passed making alterations, but no important changes were made prior to the Act of 1870. If the examinations tended to become too mechanical, the method of inspection was varied. When education became confined to those topics upon which the

¹ S. P., 1888, Vol. 35, p. 18.

² Sharpless, *English Education*, p. 13. Mr. Lowe's speech, as reported in Hansard's *Debates*, covers over 50 pages. Vol. 165, pp. 191 *et seq.*

scholars were examined, the list of studies was increased, and the questions extended to embrace a wider field. But at no time was government inspection surrendered or the principle of payment according to efficiency lost from view.

Such was the system as it existed in 1870, when the first legislative reform was undertaken. Although introduced as a tentative measure with the expectation that it would be replaced in a few years by a permanent system, it had remained the foundation of elementary education for nearly forty years. Beginning with the appropriation of public funds to local needs, it was seen that there must be some guarantee that the money was wisely expended, and that it was used where most effective. To secure this object an administrative department was necessary with agents to visit the localities and report. Thus was the principle of central administrative control introduced. The aid which could be secured from the government was so considerable as to be eagerly desired. As it could be secured only by meeting the conditions imposed, these were soon met. Then the Department, perceiving that if progress was to be made the requirements must be extended, and that this could be safely done because of the great desire to obtain aid, extended the conditions and thereby increased its control. As the grants increased, the desire to conform to the will of the Department became stronger, for the reward was greater. Every step raised the state of public education, and by this gradual evolution England was elevated to a position far above that occupied in 1833. It was a slow, almost tedious, process, but the wisdom of the Department in its gradual adaptation and extension of the plan to the various needs and difficulties cannot receive too high commendation. In the midst of sectarian strife and religious disputes, when no bill could be formulated which a majority would support, reforms were

brought about which were invaluable. To the Vice-Presidents of the Committee who so wisely guided their craft when amidst so many rocks and dangerous shoals, England is immeasurably indebted.

There was one portion of the educational field that was not and could not be reached under the system just described. It included those schools which were so opposed to all forms of government control that they would rather forfeit the grant than come within its reach. This number, though large at first, grew smaller and smaller as the years passed, partially through the decline of opposition to central control, and partially through the increasing desire to obtain the aid given by the state. It also included those portions of England where no schools were maintained, or where those that did exist were so devoid of all educational spirit, that they would make no attempt to improve or to obtain state aid. This was the most serious phase of the question, and the one which the Act of 1870 was called upon most urgently to solve. The portion of the field embraced was exceedingly large at first and continued to be so. The system of conditional grants did not and could not affect it. There was no sense of public duty to develop, no private enterprise to encourage, nothing in fact upon which the Department could act. Yet these places were the very ones which needed schools the worst. Here were found the densest ignorance and the vilest crimes, and not a single force to improve the conditions. The severest criticism that can be said of the system prior to 1870 is that it aided those communities which least needed aid and left to perish those most in need.

2. Recent Development and Present Status.

Since 1870 several acts have been passed of greater or less importance. But as they have all been in perfect harmony with the Elementary Education Act of 1870, and were

passed to remedy the defects therein rather than to introduce different principles, there is no reason for a chronological treatment of them. The discussion of the subject will be grouped about the subjects: Conditional Grants, Compulsory Education, and Default of Local Authorities.

Conditional Grants.—The Act of 1870 placed a few limitations upon the power of the department to determine the conditions upon which aid should be given. After January 1, 1871, no application for grants for building, enlarging or improving any school-house was to be considered. The eagerness with which various localities took advantage of the few months remaining in the year 1870, shows what influence state aid possessed. During the year 5,000 applications were filed, and of these, 3,230 were complete memorials.¹ In previous years, one-tenth as many usually sufficed. Aid was to be given only to *public* schools, and then not until a proper application had been made. Grants for instruction in religious subjects were forbidden, and in no case were grants to exceed in any one year the income derived from all other sources.² Within these limitations, the Education Department was given complete control. The system of government inspection was to remain, and in fact the whole scheme, both in this and subsequent acts, was one of extending the previously existing system rather than change and alteration. This is a high compliment to the suitability and efficiency of the system that had developed under the direction of the Department in previous years.

The Act of 1876 made it possible for children who had obtained certificates of proficiency and attendance to secure

¹ S. P., 1871, Vol. 22, p. 19.

² 33 & 34 V., c. 75, s. 96-8. In case voluntary contributions, fees, and grants were insufficient to meet current expenses, a local rate was to be levied and collected by a specified authority, usually the borough council or overseers. *Ibid.*, s. 53-5, and Schedule I. The powers relating to the borrowing of money will be stated and discussed elsewhere. Chapters VI. and VII.

special grants.¹ The total amount any school might receive was no longer to be limited to a sum equal to all other contributions, unless it should exceed $17\frac{1}{2}$ s. per scholar in average attendance, and certain grants were excepted from this calculation, so that practically the limit was still higher.² Special grants to schools in sparsely settled communities were legalized by the Act of 1870.³ The most radical change was made in 1891, when "fee grants" were substituted for school fees, which had been charged almost universally heretofore. The Department was given power to determine upon what conditions they should be given, within certain limitations fixed by the Act. The rate was to be 10 s. a year for each child between the ages of three and fifteen who had been in average attendance upon a public elementary school for the past year. No school receiving the fee grant which had not during the previous year received fees exceeding 10 s. per scholar could charge fees, and where they had exceeded 10 s. the fee could not exceed the difference unless the Department thought the educational needs of the locality demanded it. Even then the approval of the Department could not be given to authorize a fee of more than 6 s.⁴ As is probably known, the purpose of this Act was to create free public schools and to throw their burden upon the central government.⁵ The conditions imposed by the Department or the statutes have had little deterring power and fee grants may be considered as fixed

¹ 39 & 40 V., c. 79, s. 18.

² *Ibid.*, 19. *Vide*, 53 & 54 V., c. 22, s. 1. The relative importance of the two limits is shown by the figures for 1893-4, when deductions were made to the amount of £32,678, because exceeding $17\frac{1}{2}$ s., and of £7,617, because the grants exceeded the entire amount received from other sources. S. P., 1894, Vol. 41, p. 741, App. A bill is now (March, 1897) before Parliament to remove the $17\frac{1}{2}$ s. limit.

³ 33 & 34 V., c. 75, s. 4, 40; 53 & 54 V., c. 22. ⁴ 54 & 55 V., c. 56, s. 1-4.

⁵ £2,263,553 were expended during the year 1895. Rep. of Com., 1895-6, p. 2.

grants. Only one hundred schools refused this aid during the year 1894-5.¹ Neither have fees been approved in many cases. In 1892-3 sanction was given in 19 cases, refused in 26, and in 5 the fee grant was reduced wholly or in part by the fee required of the scholar.² Only 780,310 of the 5,299,469 scholars in inspected schools paid fees in 1895-6.³

It is evident that the statutory limitations upon the power of the Department over the conditions upon which grants are awarded are not restrictive in the least. Neither are they extensive. Consequently, if one would ascertain the true attitude of the Department, he must study the Code, and it should be remembered that it has all the force of a statute, unless it conflicts with some act of Parliament. Since 1870, all minutes are required to lie upon the table of both Houses of Parliament at least one month before going into effect.⁴ An opportunity is thus given for discussion and the passage of a law modifying or annulling the minute, but I know of no instance where legislative action has been taken, although discussion has frequently occurred and in some cases the Department has subsequently voluntarily changed the order.⁵ Probably all that would ever be necessary is a resolution expressing the position of the House.

A full account of the provisions of the present Code⁶ would be too extensive, and only a mere outline can be given, but the centralization which is so prominent a feature will easily be seen. After enumerating the conditions and definitions stated in the laws, the principal ones of which I have noted, the Code⁷ proceeds to fix the duties of man-

¹ Rep. of Com., 1895-6, p. 3.

² S. P., 1893, Vol. 26, pp. 492-5, App.

³ Report of Com., 1895-6, p. 3.

⁴ 33 & 34 V., c. 75, s. 97.

⁵ An Act entitled "Education (Code) Act, 1890," 53 & 54 V., c. 22, was passed, but it was to authorize the imposition of certain conditions in the Code, and did not limit the power of the Department. It rather extended it.

⁶ The Code for 1894-5.

⁷ S. P., 1894, Vol. 29, pp. 300 *et seq.*, App.

agers of schools, including school boards, to define other terms of common usage, such as "half-time scholar," and "attendance;" to state the subjects of instruction for which grants may be made; and to fix the duties of the inspectors (s. 7-30, 34, 65). The qualifications of pupil teachers, the conditions of candidacy, of engagement, period of service, and examination are established. Training Colleges are defined, conditions and amounts of grants fixed, and methods of securing admission stated. Assistant, certificated, and provisionally certificated teachers are also defined, and the conditions upon which candidates may be admitted to examination are given in detail (s. 31-64, 110, 129). These examinations are conducted by an inspector under the direction of the Department,¹ which has the power to recall or suspend any certificate issued (s. 67).² The conditions required to be fulfilled before *any* portion of the Parliamentary grant can be obtained are, besides the statutory provisions, that the school is not unnecessary,³ nor conducted for private gain, that the principal teacher is certificated, that it has met not less than 400 times a year if a day school, or 45 times if an evening school, that it has been visited and reported upon by an inspector, that the school premises are healthy, properly constructed, lighted, heated, etc., that a sufficient staff of teachers is employed, that the necessary furniture, books, maps, and other apparatus are provided, that instruction in drawing and needlework is given and many other details complied with, that the school is efficient, that all returns have been duly made, that the orders of the local sanitary

¹ A syllabus of the subjects covered in these examinations may be found in S. P., 1894, Vol. 29, pp. 269-300, App.

² During the year 1893-4, 8 certificates were recalled or suspended. S. P., 1894, Vol. 29, p. 548, App.

³ In 6 instances grants were refused for this reason in 1893-4. S. P., 1894, Vol. 29, p. 546, App.

authority have been obeyed, and that the income is applied only to the purposes of public elementary schools (s. 13, 14, 76-92, 108). Failure to meet these conditions is not always immediately followed by a withholding of the grant, as I shall show, and the Code expressly states that the Department has the power to pay a portion one year and give warning that it will withhold all the following year unless the conditions are met (s. 92).

Grants are divided into two classes, those to infant schools and classes and those to day schools for older scholars. The former vary from 6s. to 9s. per scholar, the exact amount being determined by the character of the instruction in a few elementary subjects and by the fact that the scholars are taught in a separate department, or what is equivalent, as a class under a teacher of not less than eighteen years of age, approved by the inspector (s. 98). The latter vary from 6d. to 14s. per scholar, the exact grant being determined by various factors. The most important are the general intelligence of the scholars in the elementary subjects, the moral training and conduct of the children, the neatness and order of the school, the proper classification of the scholars, and the character of the instruction, as shown by inspection and examination. The grants are calculated upon average attendance of the school or of the class, or upon the number passing the examination. The subjects taught are, besides the elementary subjects, algebra, Euclid, mensuration, mechanics, chemistry, physics, animal physiology, botany, principles of agriculture, Latin, French, domestic economy (for girls), Welsh (in Wales), German, bookkeeping, shorthand, navigation, horticulture, hygiene, history, singing, dairy and laundry work, and others approved by the Department (s. 15, 16). Besides these, special grants may be given under certain specified conditions (s. 101-105), and pensions are granted in certain cases (s. 130).

To enforce all of these provisions and to collect the necessary information, the inspectors are given wide powers, but the Code is quite explicit, and with every grant involving an examination, there are a series of rules to guide the inspectors. The Department has also formed "standards" up to which a school must come in order to receive the grant, thus limiting largely the discretion of the inspectors and producing uniformity.

Questions at once arise as to the important differences between the present Code and those of earlier periods. It is evident that the Code has greatly increased in size, that the powers of the central Department have also multiplied at a rapid rate, but what are the essential differences between the present Code and that of 1862, or its immediate successors? Probably the most noticeable change is in the increase of grants, both in amounts and kinds. Formerly there were only three subjects, now there are over a score, and although no one class or school could receive aid for instruction in all, yet this change has permitted schools to give a broader and more useful education. The tendency of the system is to limit instruction to the subjects for which grants are given, but the accompanying evils have been overcome by enlarging the list. The increase in the amount has stimulated endeavor, and given the central government a firmer grasp and a stronger power to lift the nation to a higher educational plane.

In close association with this transformation is another, not quite so evident. Formerly, there were few gradations between the minimum—nothing—and the maximum amounts that could be withheld. Now there are many grades varying all the way from 6d. to 17½s., or even higher in a few cases, those intermediate being 2, 4, 6, 7, 9, 10, 11, 13, 15 s. for infant schools, and 1, 1½, 2, 2½—16, 16½, 17s. for

schools for older scholars. In fact there is now opportunity for every school to be given the place in the system of educational grants that it deserves. Each school is no longer rewarded the same as some other school which is much better or worse. It should be added, however, that it is very seldom that either extreme is reached. Not frequently does a school obtain all that is possible, nor is it often deprived of all aid. This was true at one time, but not now.

A third difference is found in the principle and method of deciding whether grants should be given or withheld. The adoption of examinations as a method in 1862 has been noted. The tendency at the time was to make the plan very rigid, to personally examine every scholar, and to give or refuse aid according to the result. This principle has been slightly modified in two directions, but still remains at the basis of the present system. One modification has resulted from the introduction of the idea that the needs of a locality should also be a determining factor. Thus the maxim that aid should depend upon the results obtained is not followed exclusively, for if it seems quite certain that a school will endeavor to make the best possible use of aid, it is granted. This is seen most noticeably in the providing of special grants for needy and sparsely settled communities. But the most noticeable differences of opinion have arisen over what results shall be considered in applying "payment by results." The trend has been, as the Code shows, towards ascertaining the general character of the instruction and management, and the *relative* success of imparting knowledge, and away from set forms and fixed standards. The purpose is to reward ability and success wherever found, whether obtained through adherence to certain orthodox forms or new and radical methods, and to encourage honest and capable endeavors where external conditions prevent the attainment of results commensurate with the

efforts. It is the general condition of a school rather than the genius or stupidity of a few scholars that is the determining factor. More liberty is given the teacher, which was impossible in earlier times, but the ability of teachers and interest in educational work has advanced so greatly that the former close supervision is no longer necessary.¹ The most vital criticism urged against the system of conditional grants is its tendency to become mechanical, and to consider form instead of substance.² But this defect is being overcome, and more freedom will be allowed as rapidly as other motives than central supervision prove of sufficient force to carry on the work of progress. All control cannot with safety be removed.

The changes in the Code recently made have had an effect upon the relations of the Department to the inspectors. As long as aid was given or withheld according to conditions which might be expressed definitely in a few simple statements, it was not even necessary that the inspectors draw any conclusions therefrom. But when the question came to be settled by a general view of many factors, it then became necessary for the Department to accept the conclusions of its inspectors as final. In reality this state of affairs was reached before the Code would have made it necessary, for the Department has nearly always had an efficient corps of inspectors,³ and it was found much more convenient and just to follow their decisions as to whether grants should be given, than for the Department to set up different opinions when it had not visited the school in question. When questions of principle arise, the Department takes the matter in charge, but the work of actual administration is very largely

¹ *Vide* Report of Com., 1896, pp. 4, 5.

² *Vide* Rep. of Commission, 1886-8, S. P., 1888, Vol. 35, p. 172.

³ Matthew Arnold served as an inspector for many years, and other names of almost equal renown are to be found upon the lists.

turned over to subordinates. It must not be forgotten that through the power of appointment and removal,¹ and of giving decisions totally at variance with the recommendations of the inspectors, the Department possesses a very effective and salutary control, but it rarely needs to exercise it. The right to appeal to the Department if the managers consider the reports incorrect, is also a wise provision but is not frequently exercised.

The importance of the power of determining the conditions upon which grants shall be allotted can hardly be too highly estimated. Within a reasonable limit, there is not a reform but could be brought about by judiciously embodying it in the Code and requiring its performance before grants could be obtained. That this power has been exercised is clearly shown by the constant development of the Code and the increasing demands of the requirements. There are, it is true, certain definite bounds to the rapidity of advance and even to the final extent of the conditions. Whenever the difficulty of meeting these conditions ceases to be counterbalanced by the reward, or even when the opposition to the pursuance of a required course is greater than the desire for the grant, then the power of the Department is at an end. In different localities this point is reached at different times, and if the system is to have wide application, the Department must stop just before it reaches the place where a considerable number are antagonized. There are still quite a few localities where this plan of conditional grants, in and of itself, has little effect, but the number is decreasing, owing to a power to be discussed in subsequent paragraphs. The policy of the Department to raise the standard slowly has prevented any extended opposition and accounts for the great progress made in Elementary Education and the growing extent of central control.

¹ 33 & 34 V., c. 75, s. 43, 51, 63, 73.

It seems hardly necessary, after what has been said, to state that the system has never been merely formal, and that the requirements have constantly been made more severe. The strictness with which the Code has been enforced is not so evident, and is indeed the crucial point, for no matter how severe the paper requirements may be, if not enforced, they become worthless. A brief examination of the evidence shows the attitude of the Department to be one of strict enforcement, with sufficient leniency to permit every school to have a fair opportunity to meet the conditions before a final decision is made. The section of the Code permitting the grant to be paid one year, although the conditions have not been completely met,¹ and a warning given that should a similar report be made a second time, the grant will be withheld without further notice, has been followed to some extent, but not enough to weaken the plan of conditional grants. During the year 1895, 201 schools were "warned," and from only 20 of these was it necessary to withhold aid the following year.² These figures also show the power of the Department in bringing recalcitrant schools into line, and that inspection is not a mere form. But these 201 instances were not the only ones in which grants were withheld. A comparison of the maximum amount that could have been secured with the amount that was actually obtained, clearly shows that the power has been frequently exercised.³ To my knowledge there never has been a time

¹ In case the conditions are those imposed by Parliament, the grant *must* be withheld in the first instance.

² Rep. of Com., 1895-6, pp. 19, 22. The figures for 1892, 1893, 1894, were 307,18 and 282,29 and 686,26 respectively. S. P. (350), 1893, Vol. 68, p. 8; S. P., 1894, Vol. 29, p. 23. The managers may appeal within 14 days if they think injustice has been done, in which case the chief inspector must visit the place and affirm or deny the report. Section 86, Code for 1894-5.

³ Cf. S. P., 1894, Vol. 29, pp. 23, 26; pp. 718, 719, 720, 733, App.; also Rep. of Com., 1895-6, pp. 19, 22.

when complaints have been made, or when it could be alleged that the system was only a matter of form. The objections that are urged are urged more against its severity than its leniency, against its tendency to produce conformity to the standards of the Code than the failure to enforce them. Whatever may be said in criticism, non-enforcement can not be the charge.

Compulsory Education. When the Act of 1870 was being considered, the question of compulsory education was almost incessantly debated. The experience of all nations from Austria to America was presented and discussed, but opposition to the exercise of force was too strong to permit the establishment of a national system, and the problem was turned over to each locality to decide for itself. Each school board was given the power to pass by-laws requiring the attendance of children between the ages of five and thirteen upon some school, unless sickness prevented, or efficient instruction was given in some other manner, or an inspector had certified that the child had attained a standard of education specified by the by-law, or no public elementary school could be found within a reasonable distance, or the parents were unable to pay the fees. In the latter case, the local board had power to remit part or all of the fees.¹ All by-laws had to be approved by the Department before going into effect.² The provision giving the board the power to fix the standard, but placing the duty of determining whether a child measured up to the standard upon the central inspectors should be especially noticed. Indirectly it pays a high compliment to the efficiency of central inspection.

¹ Section 10 of the Act of 1876 transferred this power to the guardians, who were to pay the fees out of the poor rate. Under the system of free education provided for by the Act of 1891, this provision becomes of little value.

² 33 & 34 V., c. 75, s. 74. The approval is given through an Order in Council but this is a mere matter of form. The real decision is given by the Department.

Immediately after the Act went into effect, the boards began to exercise this power, and in 1872 nearly 84 per cent. of the population having school boards possessed by-laws also.¹ Little use was made by the Department of its right to withhold its approval, and the local authorities were allowed to do about as they pleased. There had been so much opposition to all central control in this direction, that it was considered much wiser to confirm the by-laws as presented.² The Department did not, however, let the opportunity slip of effecting something by drafting and circulating model by-laws. This was only a moral force, but nevertheless somewhat of uniformity was produced—more in the form than the substance. It was not long, however, before the greatest lack of uniformity was found to exist. In some districts quite rigid by-laws were passed and enforced; consequently a high percentage of the children of school age were found upon the school registers. In others the by-laws were very loosely drafted, or not enforced. And again in others, which were in 1875 nearly 15 ½ per cent. of the population under school boards, there are no by-laws at all.³

To increase attendance and produce more uniformity, the Act of 1876 was passed, which, besides being of interest as the first law to declare it to be a duty of the parents to cause their children to receive efficient elementary instruction in reading, writing and arithmetic,⁴ is of importance because it enacted that no person should employ a child under 10 years of age,⁵ nor between 10 and 13 unless he had a certificate of educational proficiency⁶ or was attending school according to the provisions of the Factory Acts, or by-laws

¹ S. P., 1872, Vol. 22, pp. 17, 18.

² Cf. *Ibid.*, 19.

³ S. P., 1875, Vol. 24, pp. 20, 22.

⁴ 39 & 40 V., c. 79, s. 4.

⁵ Raised to 11 by 56 & 57 V., c. 51.

⁶ 39 & 40 V., c. 79, s. 5, 24, schedule I.

of a school board.¹ This had some slight effect, but as in several of the Factory Acts, there was still a large loophole. Firstly, enforcement was difficult. Secondly, merely forbidding the employment of children did not place them in school. Of course in many cases the increase in income due to the labor of the child, was the only reason why he was not in school, but this was not true of all.

The Act of 1876 solved another problem more effectually. Only 51 per cent. of the population of England and Wales was under the management of school boards in 1875,² and the question arose as to how the provisions of this Act were to be enforced, and the beneficial results of by-laws secured in the remaining 49 per cent. According to previous acts, school boards could be created only where the locality desired,³ or where school accommodation was deficient, and in localities coming under neither of these, there was no school authority. To meet these difficulties, it was provided that wherever school boards did not exist, a new authority was to be created, known as the School Attendance Committee. The members were to be chosen by the borough council or board of guardians,⁴ and were empowered to pass by-laws regarding the attendance of children of school age, subject to the same regulations as school boards.⁵ It had very nearly the same powers, duties and limitations with reference to this one subject, but could not incur any expense, or appoint, employ or pay any officer without the consent of the council or guardians; and in the latter case, the approval of

¹ 39 & 40 V., c. 79, s. 5-9. Some unimportant exceptions are given.

² Computed upon the census of 1871, S. P., 1875, Vol. 24, p. 20.

³ The approval of the Department was required, but up to this time there had been no need of withholding approval, and it was largely a matter of form.

⁴ 39 & 40 V., c. 79, s. 7. Some of the members must be members of the appointing authority.

⁵ *Ibid.*, s. 20. Power extended by 43 & 44 V., c. 23, s. 3.

the Local Government Board had to be secured.¹ But the results of this experiment did not fulfill expectations, and although great improvement was made, many districts were still in as bad plight as before. In 1880, 29.3 per cent. of the population possessed no by-laws at all,² and, what was more discouraging, the very places that needed compulsory education the most were the very ones that did not possess it.

The remedy provided was that of requiring every local school authority to pass some sort of by-laws relating to the attendance of children, and, in case the Department found none were *in force*, it might treat the local authority as in default, proceeding to make and enforce by-laws of its own.³ This practically compelled some action to be taken, for it was certain that if the local authorities did not act the Department would, and the by-laws it formulated would be more strict than those they would prepare. But compelling them to enact some sort of by-laws did not necessarily mean that the standards of attendance and education would be very high or uniform. The key of the situation now became the attitude of the Department when its approval was requested. Unfortunately the Reports of the Department contain no statistics to inform one as to the number of by-laws refused or approved. It is my opinion, however, that the freedom of the locality to fix its own standards was not much interfered with at first. The great variety, even under the same attendance committee, is hardly explicable except under such a hypothesis. Five or six sets of by-laws were sometimes found in the same union.⁴ When the Commission of 1886-8 reported, much improvement was found to

¹ 39 & 40 V., c. 79, s. 31. With the approval of the Education Department an urban sanitary authority—now urban district council—might exercise like powers within certain limitations. *Ibid.*, s. 33.

² S. P., 1880, Vol. 22, pp. 28-9.

³ 43 & 44 V., c. 23, s. 2.

⁴ S. P., 1882, Vol. 23, pp. 29-35.

have been made, owing to the efforts of the Department. From 1879 to 1886 the percentage of the population in average attendance upon schools increased nearly 20 per cent., and while a portion of this is due to the higher appreciation of education, the principal cause was the above provision.¹ Since 1886 the percentage has increased 15 per cent., which is also partially due to the same cause, but mostly to the establishment of free schools.² The reasons better results have not been attained are leniency of magistrates, expense of enforcement, length and tediousness of procedure, the lightness of fines, and the indifference of local authorities.³

The present system is still far from perfect. In 1893 it was found that in thirty-one districts the by-laws applied only to children between the ages of five and ten, and between ten and fourteen, Standard IV. of the Code—a very low grade—had to be reached to permit a certificate of proficiency to be given. With the exception of about ninety others, the age limits were five and thirteen, but in the definitions of “reasonable excuses,” “time of attendance,” *et cetera*, there was still great variety.⁴ Each year beholds the revision of upwards of 140 by-laws,⁵ and as these show great improvement, the prospects are bright. Absolute uniformity can never be expected, neither will the same standards of proficiency be found in all districts. Social and economic conditions will vary greatly. Consequently, the by-laws, which must recognize these in order to be of practical application, will differ somewhat. That better results would have

¹ S. P., 1880, Vol. 22, p. 7; S. P., 1887, Vol. 28, p. 7; S. P., 1888, Vol. 35, p. 103. Cf. S. P., 1883, Vol. 25, p. 29. The exact figures were 10.3% and 12.3%.

² Rep. of Com., 1895-6, p. 13. The percentage had increased to 14.2.

³ Cf. S. P., 1888, Vol. 35, p. 105.

⁴ S. P. (350), 1893, Vol. 68, pp. 6, 8, 35.

⁵ S. P., 1894, Vol. 29, pp. 538 *et seq.*

been secured had the central government been given a more extended control is doubtful. The opposition to central interference in this instance has been too strong. The Department has never hesitated to use all of its persuasive powers, and it is to-day exerting a wide influence in this direction.

Default of Local Authorities.—The defect of the system of conditional grants in not reaching the very localities which most needed aid and central control has been pointed out; and it was this one defect that the Act of 1870 sought principally to remedy. It has also been shown how effective is the power to withhold grants and how successful the Department is in compelling the obedience of its orders through the exercise of this power. This is an indirect influence, and does not apply to all. But control has been further centralized.

The Act of 1870 provided for only one kind of local school authorities, *viz.*, school boards. Thus, there came to be two classes of provisions dealing with localities which refused to obey the orders of the Department, the requirements of the law or to maintain sufficient school accommodation, according as to whether boards did or did not exist. If none existed, the law provided that when the Department became convinced that there was insufficient school accommodation in the locality, it was first to publish its decision. If not less than ten of the rate-payers, or any number owning property rated at not less than one-third of the whole ratable value of the district, or the managers of any elementary school felt themselves aggrieved by such decision, they might apply to the Department for a public inquiry. If the deficiency was still considered to exist, another notice should be published, and if the defect was not remedied within six months, the Department should cause a school board to be formed and send a requisition requiring the necessary accom-

modation to be supplied forthwith.¹ In case the board refused to comply within twelve months, it was to be considered as in default,² and treated as described in the following paragraphs.

If a school board existed, the Act specified that when the Department considered that this board had failed to perform its legal duty, a notice was to be sent fixing a date, not less than three months in advance, before which the duty must be performed.³ If the order was not obeyed, the board was in default, and the Department could dissolve it and order an election to be held, or appoint a new board itself. It might also remove any persons thus appointed, and fill all vacancies. When the Department considered the default remedied, it could order the election of a new board in the same manner as in the previous paragraph.⁴ All expenses incurred in the performance of these duties were to be defrayed from the local school fund,⁵ and if the rating authority failed to do its duty in connection with school affairs, the school board was empowered to appoint persons to act, having all the powers of the regular rating authorities. Should the board refuse to appoint officers, it was to be declared in default, and the usual course pursued.⁶ Ample powers were granted the Department to ascertain the necessary facts upon which to base its decisions, and it could either use local authorities or appoint its own agents.⁷

No one should fail to notice the wide extent of this power. I have said the Department could act whenever a legal duty was not performed. This brief statement seems none too broad, and one should recall that the regulations issued by the Department are just as binding as the statutes. If a local board even *permits* the violation of statute or regula-

¹ 33 & 34 V., c. 75, s. 8, 9, 10, 12.

² *Ibid.*, 11.

³ *Ibid.*, 5, 6, 18.

⁴ *Ibid.*, 63, 66.

⁵ *Ibid.*, 65, 73.

⁶ *Ibid.*, 56.

⁷ *Ibid.*, 67-73.

tion, it may be called to account.¹ In case of a failure to elect members of a school board, the Department may appoint.² Upon all questions of fact, its decision is final, and when questions of law are involved resort may be had to the usual legal remedies.³

The introduction of the new school authority—the school attendance committee—was accompanied by an extension of the previous system with a few minor changes, the most important of which was the limiting of the time to two years for which members of the committee could be appointed by the Department. The same Act empowered the Department to dissolve boards upon an application from the electors of a district or from a borough council, if it is thought advisable.⁴ Not much use is made of this provision. Perhaps one or two boards are dissolved each year. The purpose is to avoid the expense of maintenance where none are needed.

In a preceding place, the reason for the passage of the law of 1880, which made the enactment of by-laws obligatory, was noted, and reference made to the method of seeing that they were enforced. The fact was recognized that if left entirely to themselves, many authorities would not enact by-laws, or if they enacted, would not enforce them. The ordinary judicial remedies were entirely inadequate to meet the situation. Just before the passage of the Act, it was found that 450 of the 2,000 school boards, 20 of the 109 borough attendance committees, and 7 of the 67 urban committees were without any by-laws. Of the 584 unions having committees, 275 had passed by-laws for one or more parishes, only 15 had for all within the union, and 309 had none at all.⁵ This was the condition under a system of local initiative. Undoubtedly the mere enactment of a law re-

¹ 33 & 34 V., c. 75, s. 11.

² *Ibid.*, 32.

³ *Ibid.*, 16.

⁴ 39 & 40 V., c. 79, s. 41.

⁵ S. P., 1881, Vol. 32, p. 26.

quiring by-laws to be passed by the local authorities would have altered these figures, and some would have enforced the by-laws they passed. But do they not indicate that if no further means had been taken to see that they were enforced, they would have become inoperative in many places? The framers of the law saw clearly what was needed.

It was for these reasons that the Act of 1880 extended the process for dealing with local authorities in default to include all cases where by-laws had not been passed or were not enforced. The Department was empowered to make such by-laws as it chose, and if these, or any framed by the school board or attendance committee, should not be enforced, the Department could treat the authorities as in default, a previous notice having been given.¹ In 1891 the duty of providing school accommodation was extended to include *free* school accommodation, thus again materially increasing the power of the Department.² *

What use now has been made of this power of the Department to act in case of default by a locality? Has it been effective? What are the results of its exercise? By June 1, 1876, the Department had made a complete inquiry into the state of education in 28 boroughs and 3,052 parishes, *final* notices had been issued where there was need, and the six months' time limit had expired. In 13 boroughs and 1,418 parishes, 870 school boards had been established compulsorily, and the remainder voluntarily.³ The experience of the first few years showed that, as a rule, the boroughs and larger parishes voluntarily established boards, but the greater portion of rural boards were formed only after an order had been issued by the Department.⁴ And this has remained

¹ 43 & 44 V., c. 23, s. 2. ² 54 & 55 V., c. 56, s. 5. ³ S. P., 1876, Vol. 23, p. 20.

⁴ Cf. Adams, *op. cit.*, p. 308; *Edinburgh Rev.*, 1874, Vol. 139, p. 221.

largely true down to the very present. On April 1st, 1896, there were school boards in 182 boroughs and 2,304 town and rural districts, containing 54 per cent. of the entire population.¹ Of these, 49 borough and 1,063 rural boards had been elected under compulsory orders.²

The number of cases in which the Department interfered after a board had been established is much smaller, being upon an average about three or four each year. Down to 1886 the figures were:³

Boards in default and members appointed by Education Department.

Failed to supply deficiency, or neglected or refused to act.	13 cases.
Board fell below quorum.....	11 “
Not elected at time fixed for first election.....	6 “
Ceased to exist	2 “
Total	32 cases.

Boards in default and new election directed.

Board fell below quorum.....	8 cases.
Did not perform duties	2 “
Total	10 cases.
School attendance committee in default...	1
Grand total	43 cases.

Questions will at once arise as to the reasons for the great difference between the number of boards compulsorily elected and the number declared in default. The attitude of the Department furnishes no sufficient explanation, for although it may be somewhat more willing to order a board to be established than to declare it in default, the difference is not sufficiently large to cause any noticeable variation.

¹ If London be excepted, in which a board was expressly established by the Act of 1870, the percentage will be much higher—63. The population of 1891 is used as a basis. Of the increased school accommodation provided between 1870 and 1895, nearly 60% was provided by school boards. Rep. of Com., 1895-6, p. 15.

² Rep. of Com., 1895-6, p. 29.

³ S. P., 1887, Vol. 29, pp. 1004-5.

The proper explanation seems to be this. Voluntary schools were the only ones in existence down to 1870, and this system was so firmly imbedded in the customs, ideas and institutions of the people, that they were reluctant to adopt a new plan. Then too, a locality was naturally opposed to admit that it did not possess sufficient school accommodation. Or, if it did, the levying of a local rate to defray expenses was often opposed. No penalty of any importance was provided for a failure to petition the Department for permission to elect a board; thus there was much to be gained and nothing to be lost. This practically resulted in many places in making the central government responsible for determining whether boards should be established. Until the Department interposed, the locality could remain inactive, knowing that when conditions required, it would receive notice. Too much importance should not be placed upon this last factor, for the statistics show that the difference between the number receiving first notices and that where boards were chosen under direct orders from the Department, was not very large.

Conditions differed in case of default. Local opposition was present, perhaps to a greater degree. The tendency to shift responsibility was probably greater. But the penalties were severe. The expense of the inquiry had to be borne by the locality, and for a time all control of education might be taken out of its hands, although it was still to bear the burdens. That the Department would exercise its prerogatives was soon proven by a few cases. There being everything to lose and nothing to gain, the local authorities wisely decided that obedience was the better course to pursue. It was only occasionally that a careless or obstinate authority had to be dealt with. What has been said is as true of the present as the past. Knowing as they do that the Department does and will exercise its power when

necessary, the local authorities are loath to come within its grasp.

Another rather surprising fact is the small number of attendance committees in default. The reason is that the central government would enact much more rigorous by-laws than the local authorities, and since it also has power to enforce them, a much severer system would be in practical operation than if the committees acted voluntarily. Remembering that they are allowed a great deal of freedom in the framing of the by-laws, the great advantages of local action are manifest. But this explanation hardly applies to the enforcement or non-enforcement of by-laws when once enacted. Other facts must be sought, which are these. Usually the by-laws are quite well enforced, so that there is no urgent need of interference. The Department is not as strict as might be, owing to the general opposition to compulsory education and methods. It seems to rely more upon its influence through other avenues. Since attendance committees are found only in those districts where sufficient school accommodation is maintained without resort to rates, but by voluntary contributions, it is in these districts that one finds education very highly appreciated, and central interference less needed. That there is still room for improvement throughout the whole country is evident from the fact that in 1893 only 74.7 per cent. of the children between the ages of five and thirteen were in average attendance, whereas 93.4 per cent. were upon the registers.¹ It should not be concluded, however, that the power has no influence. The very fact of its existence and the liability that it may be used, coupled with the fact that occasionally it is used, serves as a deterrent force.

One topic remains to be noted: the prevention of un-

¹ S. P., 1894, Vol. 29, p. 20.

necessary schools. Such a question hardly ever presents itself in any country, and it is not a very serious one in England, but some instances have arisen, chiefly due to sectarian rivalry. There is a possibility that efficiency might be impaired were there no control exercised. The multiplication of schools is by no means an encouraging sign in all cases. This difficulty would not arise under a plan where all schools are supported entirely from taxation, but under a plan of voluntary schools and state aid it is possible. Several methods exist whereby the tendency may be counteracted. One is by refusing to grant aid to unnecessary schools, as the Department does at present. This power is exercised upon an average about four or five times a year, and although it is not an absolute preventive, it serves its purpose. If private persons persist in maintaining a school without government aid where it is not needed, they can not be prevented. No one would wish to prevent them, for the burden borne by the community would be increased by so doing. But the grant is so large that this provision is practically decisive. Another method of preventing unnecessary schools is to be found in the requirement that all loans must be approved by the Department to render them valid. The rule has been followed that sanction would be refused whenever the school accommodation of the district is sufficient and the proposed loan would be used to increase it unnecessarily. This too is not an absolute barrier, for it affects only public authorities, not private individuals, and would only apply where the expense could not be immediately defrayed from the rates. A third method is to be found in the requirement that the consent of the Department must be obtained before a board can be established.¹ Thus if sufficient accommodation exists, the Department may refuse to approve. And

¹ 33 & 34 V., c. 75, s. 12.

still another comes from its power to dissolve a board after once being formed. Thus, as far as boards are concerned, the Department can absolutely prevent unnecessary schools, but not much use is made of this power. There is little need for its exercise.

Besides the powers which have been stated, the Education Department has many others of more or less importance. The principal ones are the power to unite boroughs, parishes, or school districts into new districts, to dissolve existing combinations and reunite in a different way, to direct that one district contribute towards the maintenance of schools in another, and to sanction the union of school boards for any purpose relating to Elementary Education in those districts.¹ The close analogy between the power of the Department and the Local Government Board relative to local boundaries, leads one to surmise that the satisfactory experience of the latter was a prominent reason for the incorporation of the plan in the system of Elementary Education. Time tables for schools must also be approved by the Department.² The purpose of this provision is to prevent religious instruction from receiving too much attention, or being given such a position in the program as to necessitate the attendance of children whose parents do not approve it. The Department also decides disputes as to elections and determines the number of members of a school board, and many other matters of less importance.³ No objections have been raised to the use of these powers, and they seem to have been very satisfactorily exercised.

¹ 33 & 34 V., c. 75, s. 40-52; 36 & 37 V., c. 86, s. 11 *et seq.*

² 33 & 34 V., c. 75, s. 7.

³ *Ibid.*, 31, 33 *et alia.*

3. *Past and Present Conditions.*

What, it is now proper to ask, has been the effect of administrative centralization upon educational conditions? In answering this question, it should be kept in mind that 1870 marks a distinct change. Two quite different systems have prevailed since 1833. Previous to the Act of 1870, there were no local school authorities except incidentally, as perhaps in some cases where a borough council, for instance, was appointed as trustee for an endowed school, or where a local authority was empowered by a local act to maintain schools, and such cases were rare. The central government dealt with private persons directly. The schools were what are known as "voluntary schools." The control exercised was wholly through the power to give or withhold grants.

In 1870, school boards were provided with powers to levy rates, maintain schools, hire teachers, own property, *et cetera*. In 1876, school attendance committees were instituted where no boards existed. Over both kinds of authorities the Education Department possessed large control which has steadily increased, as has been shown. Over voluntary schools its supervision has not relaxed but increased ever since 1833, owing to the greater amount of government aid that could be secured upon compliance with the conditions.

It is important, therefore, in studying the great progress in educational conditions to note three stages: 1833—the time when no control existed; 1870—just before local school authorities were introduced; and the present—the close of twenty-five years of central administrative control over local administration.

Henry Craik has tersely described the status of the earliest period as follows:¹ "The full extent of the educational de-

¹ *State and Education*, pp. 16, 17.

ficiency was not yet accurately gauged. But enough was known to prove that, on the whole, not more than one-half of those who should have been at school were there. In some of the manufacturing towns, where the increase of population had been rapid, the educational destitution was complete. In some country districts a provision even in excess of requirements had frequently been made by the charity of previous generations, but it was casual and unequal in its distribution. In towns generally, even reckoning the Sunday-schools and those dames' schools where the instruction was only nominal, far less than one-half of the children ever entered the door of a school. Even of those who were brought in, very few obtained such instruction as was of the slightest use. In many cases the children crowded together in the most unwholesome dens, were left, not to be taught, but only to be taken charge of for so many hours a day, by some one whose health, or age, or incapacity unfitted him to gain a livelihood even in the most menial occupations." Such was the educational condition of the country in 1839, six years after state aid had stimulated improvement; but if the picture is given a slightly darker aspect, one can begin to comprehend the utter lack of a practical, efficient education prior to 1833.

By 1870 conditions had materially improved. The Commission of 1858-1861 claimed that the ratio of day scholars to population had increased from 1 in 11 $\frac{1}{4}$ in 1833 to 1 in 7.7 in 1858, which still left about 1,000,000 children of school age that were not upon the roll of *any* school whatsoever.¹ Be these figures what they may, it is positively known that only 1,512,684 pupils were in attendance upon assisted schools when the inspectors made their regular visit

¹ S. P., 1861, Vol. 21, Pt. I, pp. 87, 294. A great amount of information is to be had in this extensive Report, but most of the figures are admittedly inaccurate and must be taken *cum grano salis*.

in 1870.¹ Of these, less than 80 per cent. attended the average number of days, and only a few more were credited with two hundred attendances (100 days). The full significance of these figures does not appear until one learns that all schools unassisted by the government were greatly inferior to the inspected schools. In many cases the difference was so great that no comparison was possible, and, when results were considered, the former could hardly be called educational institutions.² The worst conditions were to be found in the larger boroughs, where accommodations for only fifty per cent. of the children were provided.³ But bad as were these conditions, it must not be forgotten that an enormous improvement had been made as compared with 1833. The number of schools had increased not only absolutely, but also relatively to the population, and the same was true of the number of pupils. But more than this, the efficiency and utility of the instruction had increased at a rate out of proportion to either the number of schools or to the number of pupils. Since 1870 the improvement has been still more rapid, and although statistics furnish a poor yard-stick in many respects with which to measure this growth, the following tables may assist to some extent.

¹ S. P., 1871, Vol. 22, p. 9. This figure includes both day and evening schools. The population of England and Wales was 22,712,266 in 1871, and estimating the children of school age to be one-sixth of total population, we have 3,785,378.

² S. P., 1871, Vol. 22, pp. 7, 8.

³ Hansard, *op. cit.*, Vol. 203, p. 825.

England and Wales.	Year Ending Aug. 31, 1895.*	Year Ending Aug. 31, 1876.†	Gain in per- cent. from 1876-1895.	Year Ending Aug. 31, 1870.*	Gain in per- cent. from 1870-1895.
Estimated Population	30,394,078	24,244,010	.....	22,090,163	37.6
Accommodation—Inspected Day Schools.	5,937,288	3,426,318	.....	1,878,584	216.1
No. of Scholars on School Registers.....	5,299,469	2,943,774	80.0	?	?
No. of Scholars in Average Attendance— Day Schools.....	4,325,030	1,984,573	.....	1,152,389	275.3
No. of Institutions Inspected—Day and Night Schools	23,160	14,368	.....	8,281	179.1
No. of Teachers—Certificated, Assistant, Pupil	112,378	58,457	.....	28,033	300.9
Average Salary, Certificated Master....	122 <i>£</i> 6 <i>s.</i> 7 <i>d.</i>	?	?	94 <i>£</i> 2 <i>s.</i> 1 <i>d.</i>	30.0
Average Salary, Certificated Mistress ...	81 <i>£</i> 3 <i>s.</i> 3 <i>d.</i>	?	?	57 <i>£</i> 11 <i>s.</i> 1 <i>d.</i>	41.0
VOLUNTARY DAY SCHOOLS.					
Cost per Scholar in Average Attendance.	1 <i>£</i> 18 <i>s.</i> 11¼ <i>d.</i>	1 <i>£</i> 13 <i>s.</i> 5¼ <i>d.</i>	16.4	1 <i>£</i> 5 <i>s.</i> 5 <i>d.</i>	53.2
Annual Grant Paid ditto.....	18 <i>s.</i> 5½ <i>d.</i>	13 <i>s.</i> 3¼ <i>d.</i>	39.1	9 <i>s.</i> 9½ <i>d.</i>	88.9
Average Attendance	2,445,812	1,656,502	47.6	1,152,389	112.2
BOARD DAY SCHOOLS.					
Cost per Scholar in Average Attendance.	2 <i>£</i> 10 <i>s.</i> 1¾ <i>d.</i>	2 <i>£</i> 1 <i>s.</i> 4½ <i>d.</i>	21.2	—	—
Annual Grant Paid ditto.....	19 <i>s.</i> 5 <i>d.</i>	13 <i>s.</i> ¾ <i>d.</i>	48.6	—	—
Average Attendance	1,879,218	328,071	472.8	—	—
School Boards—Number	2,487	1,791	38.9	—	—
School Boards—Expenditure	£9,434,029	£2,920,532	223.0	—	—
School Attendance Committees—Number.	780	—	.....	—	—

* Rep. of Com., 1895-6, pp. xxv, xxx, xxxi, xlii, li. † *Ibid.*; also, S. P., 1877, Vol. 29, pp. vii, xix, xxv.

Amount of School Income.¹

Rates	£1,942,716
Voluntary contributions	836,428
Endowment	154,242
School pence	306,853
Other local sources	100,793
Fee grants	2,147,597
Grants, Science and Art Department.....	161,719
Annual grants of previous year.....	4,008,400
Total	£9,658,748

Cost of Maintenance.

Salaries	£7,389,437
Books and apparatus	604,853
Miscellaneous	1,675,800
Total	£9,670,090

Many interesting conclusions might be drawn from these

¹ Rep. of Com., 1895-6, p. 43.

tables, but I shall note only the more important. Average attendance has increased at a more rapid rate than accommodation has been provided, than the number of scholars enrolled, or population; and of these last three, the rates of increase stand in the order just named. But the number of teachers has increased still more rapidly, thus indicating that the number of pupils per teacher is diminishing. The cost per scholar, both in board and voluntary schools, has increased quite noticeably. All these signs are exhibited by an advancing educational system, and the fact that they are to be found in the English system is a strong testimonial of its efficiency and probable future improvement.

The number signing the marriage register with a mark per 1,000 married is frequently given as a fair method of comparing the illiteracy from year to year.¹

	1841	1851	1861	1871	1881	1891	1893
Males.....	326	308	246	194	135	73	50
Females.....	488	453	347	268	177	64	57
Both.....	?	235	161	113	64	21	16

Progress has also been made in many directions that can not be measured statistically. The school buildings are much more commodious, better ventilated, lighted and heated, and infinitely better fitted for educational work than formerly. The efficiency and ability of the teachers is much greater than the numerical increase in their salaries would indicate. The children are brighter, happier, more intelligent than ever before. The instruction received is practical, useful and thorough.

Such, briefly traced, is the development and present status

¹ Newsholme, *op. cit.*, p. 53. Also Annual Reports of Registrar General.

of Elementary Education in England, from the point of view of central supervision. It only remains to state how far the wonderful and undisputed progress that has been made is due to central supervision.

As to the period previous to 1870, it will probably be accepted without discussion that the central control, as exercised through conditional grants, was the prominent factor; that all else was subsidiary. The Commission of 1858-61 seems to have had this idea clearly in mind when conducting their investigation, for it is frequently mentioned, and the conclusion is always the same. The number of departments established or enlarged between 1833 and 1870 added accommodation for about 67 per cent. of the number of pupils in inspected schools.¹ This gain, the Commission thought, was almost entirely due to the system of governmental grants, and that voluntary contributions would not have filled the gap to any appreciable extent had these grants been lacking. Furthermore, it considered it very probable that the increase in voluntary contributions was largely due to the stimulation of the central government, although of course it could not be proven that an increase would not have taken place without government aid.² Concerning the relative efficiency of schools aided by the state and those unassisted, the Report states: "The superiority of inspected schools may be stated as beyond dispute; and though this is partly attributable to inspected schools possessing an apparatus of trained teachers and pupil teachers, which in other schools is unknown, yet much is due to the activity and carefulness which are the results of a system of constant supervision."³ * * * "No unassisted public school,

¹ S. P., 1871, Vol. 22, pp. 7, 164.

² S. P., 1861, Vol. 21, Pt. I, p. 69 *et seq.*

³ *Ibid.*, 229. They seem to have forgotten that trained teachers were also provided by means of state aid.

under circumstances which admit of a fair comparison, could compare with the best assisted schools."¹

The enforcement of the Factory Acts undoubtedly had some slight effect in increasing the number of pupils in attendance, but even here we have seen that central supervision was the important factor in enforcing the statutes. Their direct effect upon educational conditions is, however, probably small. Undoubtedly the spirit of reform, the public discussion of the deplorable conditions, and the increasing appreciation of obligations unmet, of duties unperformed, contributed somewhat, but I am convinced that these forces acted as incentives to produce the application of state control, without which the country would have again relapsed into indifference, and the net gain would have been small.

It seems certain, therefore, that the system of conditional grants is the *sine qua non*. Its effects were of two classes, direct and indirect. The former are seen in the wonderful development of assisted schools, schools that were inspected and aided by the government. It was not the mere fact that aid was given, but that it could not be obtained without complying with certain conditions, which caused the standard to be raised. The constant objection that teachers were too eager to conform to the ideas of the inspectors is conclusive evidence. Moral responsibility was lacking. Private initiative was inadequate. Conditional aid was a mighty power.

The indirect effects were seen in the improvement of many schools receiving no portion of the government grant. It is hardly proper to ascribe all this improvement to the system, but an extremely large portion may be attributed to it. An efficient school offering better instruction would tend to win pupils from the neighboring schools which were not as effi-

¹ S. P., 1861, Vol. 21, Pt. I, p. 277.

cient. Just at this point denominational rivalry served a good purpose, for it stimulated those refusing to submit to central supervision to greater endeavors and to larger contributions in order that they might retain their grasp upon the work of education, an invaluable means of increasing the influence and membership of the denomination. The feeling of responsibility was also stimulated, and with genuine examples before their eyes, the ambitious were better able to achieve the desired results. The increase in the number of children attending is due to the increased appreciation of the value of education in general and to the greater and more practical utility and thoroughness of the new instruction, the causes of which we have just seen.

Passing now to the period subsequent to 1870, the first fact to strike our attention is that development was more rapid than in the earlier period. Nor is it a simple coincidence. What has been said in the few preceding paragraphs applies here as well, and with added force, for the grants have been larger and hence of greater power. But other factors have been present. A new plan was adopted in 1870, a plan providing for local action with central supervision and interference in case the local authorities failed to perform their duties, thereby reaching all localities, whether influenced by state aid or wholly beyond its grasp. The effects of this system have been noted. The large number of boards established compulsorily shows its influence, for it is proper to assume that had this plan not existed, these localities would have remained lacking in sufficient accommodation, at least for some length of time. The indirect influence it may have had is hard to estimate, but it probably had some. The power to act when a local authority is in default and to determine when it is in default is a most effective power, and is the cause of a large portion of the improvement since 1870.

The powers regarding compulsory education have also had some effect in raising the per cent. of the population upon the rolls and in average attendance, although, as has been said, the mere provision of better educational facilities has a great influence in inducing a larger attendance. The establishment of fee grants has also contributed its share, and as far as it has had any effect, little can be attributed to central control. It is not a necessary part of the scheme.

It is concluded, therefore, that although all other forces must not be obliterated nor lost from view, yet more credit is to be given to central supervision than to all others. And while its present *direct* influence is decreasing because of increasing moral responsibility and an aroused interest in educational matters, it is by no means entirely lacking nor approaching the point of extinction. It exists and exercises a wide influence through its potentiality.¹

¹ In the Code for 1897, which was received after this chapter had been written and the proof-sheets corrected, there are but few changes, and these are comparatively unimportant. Two or three subjects have been added to the list of studies for which grants may be obtained. The method of distributing aid has been slightly modified so as to allow more freedom in the management of schools. Otherwise the Code for 1897 is almost the same as the Code for 1894-5.

CHAPTER VI

LOCAL FINANCE—EXPENDITURE

IN the consideration of the control central administrative authorities possess over the finances of local authorities, there arise naturally four divisions: the assessment and collection of rates; the acquisition, management and alienation of property; the raising and expenditure of loans; and the audit of accounts. The last is of sufficient importance to require a separate chapter. The first two do not demand extended notice, and will, therefore, be discussed in connection with the third in the present chapter.

The historical development of the present control needs but slight consideration. It would merely show what has been so often pointed out, *i. e.*, that English local government is a product of slow growth. Central supervision was first tried in a portion of the field, and being highly beneficial was gradually extended to other portions, until at present nearly the entire field is included. Then again, it is only within the last quarter of a century that a genuine control has been needed. City lighting, street improvement, urban transportation, waterworks, sewerage, housing of the poor, pleasure grounds and many other public conveniences are of comparatively recent origin. Of still more recent date is the desire to expend large amounts for these purposes and to cast the burden of paying for them upon future generations. Consequently, present conditions will alone be treated, and a few interesting facts concerning the growth and development will be inserted in connection therewith.

1. *Rates*.—Central administrative control over the valuation of property and the assessment and collection of rates is slight. Very few instances exist where a direct control may be exerted, but indirectly these matters may be reached to some extent. The quasi-legislative power of the Local Government Board to order the performance of certain acts may influence the amount of the rates considerably. The power to act in cases of default might also be so used as to increase expenditure materially. The granting of certificates of efficiency to local police forces by the Secretary of State implies a certain expense in order to obtain this certificate. Certain of the “adoptive acts” can not be put into practical operation until the consent of the Local Government Board has been secured, as for instance in the case of the Housing of the Working Classes Act,¹ the Baths and Wash-houses Acts,² or the Local Government Acts.³ But all these provisions, and many others that might be given, were not enacted to establish a control over rates; and any control that may be exercised is an incidental effect, and considered only as a very small element in determining the course to be followed. This indirect control applies only so far as the expenditure is made from the rates, but as the central authorities practically have the power of deciding whether an expense shall be defrayed from the rates or by loans, it *may* exert some influence.

Another indirect method of exercising a control over rates is through the power of the Board to decide appeals between private individuals and local authorities, and between two or more local authorities in certain instances,⁴ but here

¹ 53 & 54 V., c. 70, s. 8.

² 9 & 10 V., c. 74, s. 5; 34 & 35 V., c. 70, s. 2, 7, *et alia*.

³ 35 & 36 V., c. 79, s. 25; 38 & 39 V., c. 55, s. 277, 343.

⁴ Many instances might be given, but see 38 & 39 V., c. 55, s. 4, 53, 180, 229, 268; 45 & 46 V., c. 50, s. 153, 229; 45 & 46 V., c. 56, s. 28; 53 & 54 V., c. 70, s. 41.

the control over rates is a subordinate matter and is not even a factor in determining the decision.

All direct supervision which is of sufficient importance to deserve particular notice is wanting, and the nearest approach I have been able to find is that empowering the Local Government Board to order a new survey to be made, in case it appears that a correct valuation cannot be made without such survey and an application has been received from the board of guardians or any other officers competent to make and levy the rate.¹ Statutory limitations and private initiative working through the usual judicial remedies are relied upon to keep the rating authorities within bounds. These have been quite successful, for ever since the tendency towards municipal enterprise developed, the opposition to taxation has kept the rates from being overburdened, and the question has been how to prevent the expense from being unduly shifted to the future, rather than how to prevent the present rate-payers from being too heavily taxed.

2. *Property*.—Unless expressly or impliedly stated in an Act of Parliament, no local authority has the power to purchase land, buildings or property of any sort, or make loans upon the security of property or rates.² The difference between the plan of permitting a central authority to confer by a provisional order the power to perform an act, and the plan of merely requiring the consent of the authority to be obtained before an act may be accomplished is important. In both cases the central authority may grant or refuse the request, but in the former the approval of Parliament is required.

¹ 6 & 7 Wm. IV., c. 96, s. 3.

² The term "local authority" has a definite legal meaning in English law, and varies so greatly in different acts that its meaning here should be given to avoid misunderstanding. It includes all local authorities which are required or empowered to enforce general acts of Parliament.

Practically this difference is unimportant for although Parliament *may* withhold its sanction, it is only in a small percentage of cases that it actually does so. Presentation usually means confirmation. But the main difference lies in the fact that when a power is conferred by a provisional order, it may be exercised in all instances within the scope of the order; the one grant covers them all, and consent does not need to be secured in each individual case. By the latter method, a decision must be obtained upon every case, and each is decided according to the particular questions involved. Of late it is quite customary even when a grant of powers is made by a provisional order to require approval in each case and nearly always where it has been the custom to do so in a general act.

What has been said regarding the indirect control of central authorities over rates applies to the acquisition, management and disposal of public property. Whatever central control there is over these matters, is incidental. They may be passed over as before, and the plans of direct control alone considered. It is not proposed to give all the provisions; that would be almost impossible, because of the great number and variety. Only the most important have been selected. The subject will be treated from the point of view of the authorities controlled, because the lack of uniformity makes any other treatment impossible.

Sanitary Authorities must secure the consent of the Local Government Board in order to purchase waterworks, the right to take or convey water, property for laying out new streets, and rights, powers and privileges of gas companies already formed; to levy tolls under Markets and Fairs Clauses Act, 1847, to let lands, and to contract for the cleansing of streets. To purchase lands otherwise than by agreement, or to supply gas where no company exists, a provisional order or an Act of Parliament is necessary to

put in operation the Land Clauses Consolidation Act, 1845, and the Gas and Water Facilities Act, 1870.¹

County Councils are subject to the same regulations as sanitary authorities regarding the purchase or acquisition of lands; and to alienate lands and buildings, the approval of the Local Government Board is required. In the latter case, the proceeds must be applied as the Board directs.²

Parish Councils are required in many instances to obtain the consent of the parish meeting or the county council, and in some respects the control is more decentralized here than in the case of other authorities. As to the acquisition of land by agreement, there is scarcely any central control, but to obtain land otherwise a representation must be made to the county council, which *may* issue an order putting into force the provisions of the Lands Clauses Acts. If it refuses, the Local Government Board may so order. Confirmation by the Board of the order of the county council is also provided for, but if no memorial against the order is presented, it *must* confirm, otherwise it may do as it pleases. To render valid the sale or exchange of lands or buildings which have been acquired at the expense of any rate, or which are or may be so applied as to furnish an income, the approval of the Board must be secured.³

Municipal Corporations can not purchase, mortgage nor lease land (except for short terms), nor convert it into sites for workmen's dwellings if the amount exceeds five acres, without the approval of the Board which may as usual impose such conditions as it deems proper. The appropria-

¹ 38 & 39 V., c. 55, s. 42, 51, 154, 161, 162, 167, 176, 177. See also 53 & 54 V., c. 70, s. 57, 60, 64.

² 51 & 52 V., c. 41, s. 64, 65. Twenty-four orders were issued in 1895, relative to the sale or lease of property and the appropriation of proceeds. 25th Rep. of L. G. B., 1895-6, p. 26.

³ 56 & 57 V., c. 73, s. 8, 9, 10, 68.

tion of the proceeds of the sale of land or corporate stock, the transfer of annuities, the management of sinking funds and investments are subject to the same control.¹ When the borough council acts as a sanitary authority, it is, of course, subject to the same restrictions as other sanitary authorities.

School Boards are obliged to obtain the consent of the Education Department to sell, transfer or lease lands or buildings,² and all schemes relating to endowed schools must be submitted and approved.³ The taking of land otherwise than by agreement can only be authorized by a provisional order framed and submitted by the Department.⁴

Poor Law Officers are under similar restrictions as to the construction, renting, enlargement of workhouses and pauper schools, and the purchase, sale or lease of property.⁵

Local Authorities in General. Besides the preceding, there are numerous provisions scattered through the statutes which impose various restrictions upon "local authorities," and although different acts contain different definitions, in general it may be said that the term usually includes rural and urban district councils, county councils, borough councils, parish councils, and commissioners of various sorts, as improvement commissioners and commissioners of libraries. There are also various central authorities that possess more or less control, the most important of which are the Local Government Board, the Commissioners of the Treasury, the Board of Trade and the Board of Agriculture. The Local

¹ 45 & 56 V., c. 50, 105-116, 120; 53 & 54 V., c. 70. 110 orders were issued in 1895. *Vide* 25th Rep. of L. G. B., 1895-6, p. 358 App.

² 33 & 34 V., c. 75, s. 22.

³ 32 & 33 V., c. 56; 33 & 34 V., c. 75, s. 75; 36 & 37 V., c. 87, s. 3.

⁴ 33 & 34 V., c. 75, s. 20, 21.

⁵ 4 & 5 Wm. IV., c. 76, s. 23; 5 & 6 Wm. IV., c. 69; 5 & 6 V., c. 18; 13 & 14 V., c. 57; 29 & 30 V., c. 113, s. 8; 30 & 31 V., c. 106, s. 13; 56 & 57 V., c. 73, s. 6; *et alia*. 246 orders were issued granting approval in 1895. 25th Rep. of L. G. B., 1895-6, pp. 93-95.

Government Board must give its approval in order that these local authorities may purchase or appropriate lands, otherwise than by agreement, for the purposes of establishing and maintaining baths and wash-houses;¹ or may appropriate, purchase, rent, sell or exchange lands for libraries and museums.² And under the Housing of Working Classes Act, the whole scheme for providing accommodations for the working classes must be submitted and approved.³ Although deprived of many powers by transference to the Local Government Board, the Board of Trade still maintains some of its former importance. Probably the most important control it possesses is to be found in the provision requiring the construction of tramways by local authorities to be previously approved by it. To purchase the rights and privileges of a private corporation, the local authority must secure the consent of the Treasury.⁴ The Board of Trade is also empowered to license a local authority to supply electricity for public or private purposes (under certain restrictions), and the conditions imposed upon the purchase of a plant by a local authority practically require its approval.⁵ The purchasing or renting of land for purposes of the Diseases of Animals Act must be approved by the Board of Agriculture.⁶ The most common provision is that empowering the Local Government Board to adjust the property, debts, liabilities and other interests of parishes, unions or districts whose boundaries have been altered^d by its orders.⁷ This power is very useful in preventing litigation and prolonged disputes.

¹ 9 & 10 V., c. 74, s. 24, 32; 34 & 35 V., c. 70, Schedule; 38 & 39 V., c. 55, s. 10; 41 & 42 V., c. 14, s. 9; 45 & 46 V., c. 30.

² 55 & 56 V., c. 53, s. 2.

³ 53 & 54 V., c. 70, s. 8.

⁴ 33 & 34 V., c. 78, s. 4-8, 43, 44; see also 45 & 46 V., c. 62, s. 7.

⁵ 45 & 46 V., c. 56, s. 4, 5, 27.

⁶ 57 & 58 V., c. 57, s. 33.

⁷ 18 & 19 V., c. 79, s. 2; 30 & 31 V., c. 106, s. 15; 39 & 40 V., c. 61, s. 8; 56 & 57 V., c. 73, s. 68; *et alia*.

Such briefly are the most important provisions establishing a central control over local finances. Their great variety precludes the formation of a valuable general rule, but the following seems the best one that can be evolved. When the acquirement of property or privileges is for a purpose of vital interest, and one in which the local authority is not likely to exceed its proper sphere nor violate private rights in applying the law, the conditions are simple, easy of fulfillment, and the approval of a central authority is not required; but where the opposite is true or likely to be the result, its action is beset with many restrictions, the most effective of which is the one requiring the consent of a central authority to validate the act. This rule is vague and indefinite, but there seems to be no other that will harmonize the provisions and explain the apparent great lack of uniformity.

It seems hardly necessary to say that the central control just described, is not the only restriction upon the powers of the local authorities. There are numerous statutory limitations besides. Further, within the last few years a slight decentralization has begun. Certain powers have been conferred upon the county councils, very similar to those exercised by the Local Government Board; as for instance in the case of compulsory taking of land, where the Lands Clauses Consolidation Act may be put into operation under the Allotments Act by a provisional order issued by the county council.¹ This movement does not seem to be due to any opposition or serious objections to the present plan, but rather to the belief that the Local Government Board is overburdened with details that could just as well be entrusted to other authorities.

3. *Expenditure—Loans.*—The same general remarks that

¹ 50 & 51 V., c. 48, s. 6.

were made regarding the indirect methods by which rates could be affected apply as well to the amount, purposes and character of expenditures defrayed by loans. But the problems confronting us in the latter case are of an entirely different character. Private initiative can be depended upon to keep rates within bounds, but as to loans, it is entirely inadequate. The number of persons who consider themselves called upon to guard the interests of future rate-payers is very small. Thus some control is necessary, either administrative or legislative. In reality we find both, and it is interesting and important to pursue the investigation with two questions in mind: Which of these two methods is the more desirable? To what extent is an efficient control exercised?

Glancing briefly at the statutory limitations upon the borrowing power which are to be enforced through private interest and the usual judicial processes, one finds several classes, *viz.*, limitations upon the amount of indebtedness, the time and method of repayment, and the purposes of the loan. As examples of the first, it is found that the indebtedness of county councils may not exceed one-tenth,¹ that of guardians one-fourth,² that of parish councils one-half of the annual ratable value.³ District councils may not exceed the ratable value for two years.⁴ Numerous laws, such as the Small Holdings Act, Allotments Act, the Housing of the Working Classes Act, have increased these limits, although the limit for any specific purpose has remained unchanged. The maximum time which loans may run is also fixed. Loans made to defray the cost of construction or purchase of tramways must be repaid within thirty years,⁵ which is also the limit for municipal corporations when borrowing for corpo-

¹ 51 & 52 V., c. 41, s. 39.

² 52 & 53 V., c. 56, s. 2.

³ 56 & 57 V., c. 73, s. 12. ⁴ 38 & 39 V., c. 55, s. 234. ⁵ 33 & 34 V., c. 78, s. 20.

rate purposes,¹ and for county councils.² Parish councils and district councils for sanitary purposes are limited to sixty years,³ school boards to fifty.⁴ The method of repayment is also specified in many instances, but even here much discretion is left to some central department,⁵ usually the Local Government Board. The purposes of loans are also specified in general terms only, but since the approval of the central authority is usually required, the whole question is practically within its power to determine. Of course no local authority may borrow money for purposes not specified in its grant of powers, but when the power to borrow for a certain purpose is granted, the exercise of this power in a given instance must usually be approved by a central authority. The statutory limitations limit the central as well as the local authorities, but as will be shown later, they have in reality not restricted the former, for the conditions it imposes have been far within the fixed limits of the statutes.

I have said that private interests are depended upon to enforce these provisions. Strictly speaking this is not quite accurate, for, as will be seen in the following pages, the central government has come to exercise a disciplinary power through its power to withhold approval to loans, and to apply for a *mandamus* to compel compliance with its orders and the provisions of law. Practically, the central government is depended upon to enforce the statutory provisions as much if not more than is private interest.

Passing now to the consideration of the plan of central administrative control, the principle which seems to be at the basis of the system is that local authorities are incapable of

¹ 45 & 46 V., c. 50, s. 112.

² 51 & 52 V., c. 41, s. 69.

³ 38 & 39 V., c. 55, s. 234; 56 & 57 V., c. 73, s. 12.

⁴ 36 & 37 V., c. 86, s. 10.

⁵ See, for example, 36 & 37 V., c. 86, s. 10; 38 & 39 V., c. 55, s. 234; 38 & 39 V., c. 83; 48 & 49 V., c. 30.

exercising a proper control over themselves, that private initiative is inadequate, and that statutory limitations do not possess the desired flexibility or capability of adaptation to varying conditions. Hence it may be laid down as a general rule, with but few if any exceptions, that the approval of some central department must be secured before a loan can be legally made. The decisions of such department are not reviewable by any authority, except so far as a question of law is involved. The courts will not go into the discussion of whether the decision was wise or not, but only whether it was within the power of the department.¹ If approval is denied, the only recourse is a local act, or perhaps a curative act, but the latter is a possibility and not a probability. The same rules apply to the many conditions regarding the security to be given, the time and method of repayment or other matters which the central authority may impose. Indirectly another influence is brought to bear by the power of the central departments to authorize the Public Works Loan Commissioners to loan to local authorities usually at lower rates and upon more favorable terms than can be obtained in the general market.² If the Local Government Board gives its sanction after an official investigation of the financial position of a local authority, the securities so issued cannot be impeached for informality or want of power to issue them.³

The comprehensiveness of the control can be best understood by giving a list of the authorities and purposes for

¹ The cases upon this point are very few, but this rule of law seems to be thoroughly well established, so well, indeed, that it is no longer questioned.

² 38 & 39 V., c. 55, s. 243; 36 & 37 V., c. 86, s. 10. Up to March 31, 1894, about £46,000,000 had been advanced since 1817 in England and Wales to all authorities and under all conditions, of which £21,000,000 was still outstanding. The rates varied from $3\frac{1}{8}$ to 4% for year 1893-4. Wright & Hobhouse, *op. cit.*, p. 111.

³ 38 & 39 V., c. 83, s. 26; 47 & 48 V., c. 30. Not much advantage has been taken of this provision.

which loans were sanctioned during 1895-6 by the Local Government Board. The terms are to be given the widest application, as I have combined and abbreviated them as much as possible. The size of the loan makes no difference. It may be £30 for office furniture or £90,000 for sewerage.¹

The purposes for which *District Councils* borrowed money included water supply, sewerage, sewage disposal, new streets, street improvement, public lighting, fire stations, engines and appliances, improvement of markets, slaughter-houses, yards, stables, offices, mortuaries, public parks, recreation grounds and other public conveniences, gas works, electric lighting, depots, hospitals, bridges, steam rollers, workmen's dwellings, winter gardens, urinals, hydrants, sea defences, baths and wash-houses, band stand, libraries, allotments, costs of provisional orders, technical instruction, *et cetera*. The number of loans was about 1600, and the total amount sanctioned over £6,100,000.²

Municipal Corporations received consent to borrow for the improvement of bridges, markets, municipal buildings, lunatic asylums, lighting of town hall, improvement of estates and offices. In certain other instances, as for public libraries, baths, technical instruction and allotments, loans were also sanctioned, but it is difficult to say whether the borough council was then acting as an urban district council or a municipal authority. The number of loans of the first class was forty-one, and the amount £252,815.³

Poor Law Authorities, not having extensive wants, borrowed for purchasing or repairing workhouses, infirmaries

¹ 25th Rep. of L. G. B., 1895-6, pp. 554, 574, App.

² *Ibid.*, pp. 552-585, App. The most important acts are 34 & 35 V., c. 70; 38 & 39 V., c. 55, s. 234, 343; 45 & 46 V., c. 56, s. 8; 50 & 51 V., c. 22, s. 7, 8.

³ *Ibid.*, pp. 356-7, 575-579, App. *Vide*, 9 & 10 V., c. 74, s. 21; 45 & 46 V., c. 50, pt. V.; 51 & 52 V., c. 41, s. 9, 106; 53 & 54 V., c. 5.

and workhouse schools, and for purchasing land, the sum of £858,950.¹

County Councils received consent for the following purposes: bridges, improvement of main roads, highways, lunatic asylums, police buildings, county offices and buildings, technical instruction, and repayment of loans. In all £472,428 were authorized to be borrowed in eighty-four loans.²

Parish Councils being of recent creation cannot be said to be thoroughly organized. The only purpose for which loans were sanctioned in 1895 was "burial ground," and the entire amount of the six loans was £2,665.³ All loans must be approved by the Local Government Board⁴ (and the county council as well), and as there are a number of "adoptive acts" which may be applied,⁵ these figures will probably increase within the next few years.

There are a few other authorities whose loans must be approved by the Board, such as joint boards under the Public Health Acts, metropolitan sanitary authorities, port sanitary authorities, and commissioners for public baths and wash-houses, but these are comparatively unimportant.⁶

School Boards must secure the consent of the Education Department to borrow on the security of the school fund and local rate.⁷ Up to September 29, 1895, £30,225,396 had been borrowed, of which £24,376,418 were still outstanding.⁸

¹ 25th Rep. of L. G. B., 1895-6, pp. 93-94. *Vide*, 13 & 14 V., c. 101, s. 3; 34 V., c. 11; 42 & 43 V., c. 54, s. 11, 12; 52 & 53 V., c. 56, s. 2.

² 25th Rep. of L. G. B., 1895-6, pp. 351-2, App. *Vide*, 51 & 52 V., c. 41, s. 12, 69; 52 & 53 V., c. 76; 53 V., c. 5, s. 274.

³ 25th Rep. of L. G. B., 1895-6, p. 361, App.

⁴ 56 & 57 V., c. 73, s. 12.

⁵ *Ibid.*, 7.

⁶ 25th Rep. of L. G. B., 1895-6, pp. 586-7, App.

⁷ 36 & 37 V., c. 86, s. 10; 39 & 40 V., c. 79, s. 15.

⁸ Rep. of Committee, 1895-6, pp. 34-35. Figures are for England and Wales.

Besides the two central authorities mentioned, the Secretary of State, the Board of Trade and the Commissioners of the Treasury possess similar powers, but they are comparatively so unimportant as not to demand careful notice. Until within the past few years, their powers were more extensive, but of late they have lost in power, and the Local Government Board has gained.¹

It has probably been perceived ere this that in many cases the central authorities possess a double control. For example, consent must be secured to render valid the purchase of waterworks, and if the expense is to be met by a loan, the local authority is also obliged to secure approval as to the time and method of repayment. Doubtless this is perfectly proper, for the two acts are of a different character, and need separate consideration. If the expenditure is defrayed directly from the rates, this double control does not obtain, but practically it is very extensive, for the reason that the amount that can be raised by taxation is a very limited sum, legally and practically. The statutory limitations upon the amount that may be raised by rates are not numerous nor very restrictive,² but the practical limitations are more efficacious. The dislike of heavy rates is as widespread and as strong in England as elsewhere, and since the rate-payers constitute a large portion of the electors, this feeling has considerable influence. Then it is much more pleasant to shift the burden than to bear it, and as long as it is possible it is likely to be done. Even the deferment of payment a few years is a favorite scheme. Where the amounts are so small that immediate cancellation will not heavily burden the rates, these remarks do not apply, but there is a strong temptation to shift all that can be shifted.

It is to be concluded, therefore, that whenever the acquisi-

¹ Cf. 51 & 52 V., c. 41, s. 72.

² Cf. 55 & 56 V., c. 31, s. 18; 55 & 56 V., c. 53, s. 2; 56 & 57 V., c. 73, s. 11.

tion of property requires central approval, there exists a double control, and that no important loan can be made by a purely local authority unless some central administrative authority give its consent.¹ Only one exception exists, and that is in case borrowing power is conferred by a special act and no approval is required. Formerly this power was much abused, but of late the tendency is more and more to require approval even under a local act, or to refuse to pass it except in extreme cases.

4. *Effects of Control.* The period of central administrative control over local finance may be divided into two periods, of which the years from 1870 to 1875 may be said to mark the point of transition. In the earlier period, the great question confronting the central authority in connection with sanitary administration was how to overcome the apathy and indifference of local authorities. Poor law officers could not raise loans for many purposes, except the erection of workhouses, and they did not seem to be too eager to act even here. Municipal councils, the only other prominent class under central control, did not show a disposition to plunge too rapidly into debt, and their competence was and is still quite limited as purely *municipal* authorities. But the great problem was how to improve sanitary conditions, how to incite to action, how to induce the incurring of indebtedness rather than how to check it.² Hence, the need of the system of control just described was not so apparent as at present.³ Yet when a loan *was* made, there was as

¹ Most of the acts providing for central approval extend the plan to include all expenditures which the central department thinks should be extended over a period of years.

² Rep. of L. G. B., S. P., 1872, Vol. 28, pp. 43, 44.

³ The total amount of loans sanctioned from 1848 to 1871—23 years—was only about £10,300,000; whereas, from 1871 to 1895—26 years—£73,102,031 in loans were sanctioned to urban and rural authorities alone. 25th Rep. of L. G. B., 1895-6, pp. 100, 101.

great need in that individual case as ever. There was a tendency upon the part of the central authority to be somewhat lax in order to induce the undertaking of sanitary improvement, and this partially explains why loans were allowed to run for longer periods than in recent years. The experience of this earlier period shows how easily central administrative control adjusts itself to the demands of the time, and how capable it is of infinite flexibility and expansion.

The difference between this period and that embraced within the past twenty or twenty-five years is readily apparent. In the latter the great problem has been how local indebtedness might be kept within bounds, how authorities might be restrained from making loans for purposes which were unnecessary or in amounts which were excessive, how periods of repayment might be restricted within such limits that each generation would bear the expense of the undertakings by which it was benefited and not impose upon a future generation the burdens of the present, how proper methods of repayment, sinking funds, *et cetera*, might be secured. Just where the dividing line is to be drawn between these two periods cannot be definitely determined, for there is no point where a complete transformation may be said to have occurred. Opposition to local action was greatest in 1848. Gradually it decreased, giving way to an actual desire to act, until within the last ten years, debt has been incurred with amazing rapidity. If any point exists where the change may be said to have been more rapid than at any other, the early seventies undoubtedly mark it. The reports of the Royal Sanitary Commission, the Public Health Acts of 1872 and 1875, amending and consolidating previous acts, all conspired to produce the same effect.¹ The change was most noticeable in the attitude of rural sanitary authorities, which borrowed in 1874 six times as much as in the previous year.²

¹ Rep. of L. G. B., S. P., 1877, Vol. 37, p. 56.

² *Ibid.*, 1875, Vol. 31, p. 43.

It should not be concluded that England is now at the culmination of the tendency to make large loans for long periods upon insufficient security with no wise plan for repayment, for high tide in these respects has passed, and illegal, unjust and unwise methods are giving way. It is doubtful, however, whether certain tendencies that may be called socialistic are becoming weaker. The opposite seems far more probable, for the tendency of the county and borough councils seems to be to widen their spheres of activity and to conduct many enterprises which have hitherto been in the hands of private individuals.

Passing now to discuss the effects of central control in the period from 1870 to the present, I shall first undertake to ascertain what effect it has upon the length of the period of repayment. Here, as in the following paragraphs, I shall attempt to study but one field, sanitary administration. The reasons for this limitation are that it is more important from the present standpoint than any other one field, that the results attained in this line have been duplicated more or less in others, that the material is more complete, and that the system has been more fully tested here than elsewhere.

The importance of the length of time within which loans are repaid needs no amplification. It is commensurate with the injustice, the folly and the injurious effects of an exceedingly long term, which thrusts the burden upon those that have received no share in the benefits, and which retards the onward march of progress because the future is obliged to bear its own burdens as well as those of previous generations. The only safe rule is that all debts should be paid before the usefulness of the thing for which they were incurred ceases. And even this must be followed with due allowance for the liability that new inventions may render present investments of little service. Nor is the danger of unduly extending the period of repayment an imaginary one.

It has been frequently encountered in England, and will be brought out more clearly when we come to consider local legislation dealing with financial matters.

The policy of the Local Government Board as stated in the report for the year 1871 was as follows: "In the case of every loan we have satisfied ourselves that the proposed works have been necessary and adapted for the requirements of the locality, that they would without doubt last good for at least as long a time as that limited for the repayment of the loan, and that the estimates for them have not been excessive,"¹ The same fundamental principle of action is quoted in nearly every report, and is certainly an ideal one. To ascertain the facts in any specific case, inquiries were held within the localities petitioning for sanction to a loan. Previous public notice was given, and all rate-payers were invited to be present and state their opinions. Examinations were made into every detail, ample powers having been conferred by statute.

But a question arises as to whether the powers of the Board have been properly exercised, and whether the principle enunciated has been closely followed. As to the former, there seems to be no evidence that points to an improper exercise. The inquiry has not been held without abundant notice being given to all who wish to attend. The utmost publicity obtains, and the reports sent to the central authority have very seldom if ever been made upon incomplete or inaccurate evidence. To answer the latter question is somewhat more difficult. The exact nature of the purpose for which the loan is made must be known. The expense of securing a piece of land for a town hall may very properly be extended over a long period of years, say fifty or sixty. The grading of a street should be repaid within a period not quite as long. But when a street is paved with material

¹ S. P., 1875, Vol. 31, p. 43. 25th Report of L. G. B., 1895-6, p. 107.

which because of frequent use or other causes would involve repaving within a few years, the duration of the loan should be very brief.

An examination of the loans sanctioned under the various public health acts to the urban and rural sanitary authorities during 1892 furnishes some data.¹ Of the 104 loans, extending over a period of 50 years, 89 were specifically mentioned as being for the purchase of land. The remaining 15 were distributed as follows: sewerage and sewage disposal, 2; street improvement, 7; water supply, 1; depot, 1; repayment of loan, 4. Of these fifteen it is probable that some were really for the purchase of land, so that ninety per cent. of the total number may be considered to fall under this heading. As to the remainder, it would be necessary to know more fully the exact nature of the purpose before approving or condemning the decision of the Local Government Board. None of the loans was for a longer period than fifty years, and although the limit fixed by law is sixty, the Board has deemed it unwise even in the most urgent cases to permit the limit to be reached. After the fifty-year limit is passed, we find very few loans until we reach thirty, as is shown by the following tabulation of the 1122 loans sanctioned to urban and rural sanitary authorities during the year:

Periods of repayment.	Per cent. of total number.
50 years.....	9.3
31 to 39 inclusive.....	1.3
30 years.....	41.5
20 to 29 inclusive.....	21.7
10 to 19 "	16
1 to 9 "	10.2
	100.0

Thus it is seen that only one-tenth exceeded thirty, be-

¹ Report of L. G. B., S. P., 1893, Vol. 43, pp. 394-411, 415-419, App.

tween six and seven-tenths lay between twenty and thirty inclusive, and the remaining two-and-one-half-tenths fell below twenty years. When with these figures is coupled the fact that by far the larger portion of these loans—comparing amounts borrowed—was for street improvements, water supply, sewerage and sewage disposal, it seems very probable that the real attitude of the central authorities has accorded very closely with their principles as stated.¹

If we examine the figures of 1874, we find that even at that early date the Board exercised a restrictive influence, keeping the loans far within the statutory limit and permitting thirty years to be surpassed only in a few cases. The figures are:²

Periods.	Per cent. of total amount sanctioned.	Per cent. of number of loans.
57 years.....	1.	.4
50 "	14.	5.
31 "	.5	.4
30 "	61.	61.4
20-29 inclusive.....	9.	13.
10-19 "	3.9	10.3
1-9 "	4.2	6.8
Not given.....	6.3	2.7
Total £940,937.....		223 Loans.

A comparison with the list for 1896 shows that the periods at present are much shorter and that the tendency is to further restrict them, yet no change has been made in the meantime in the statutory limits or the powers of the Board.

If we compare the legislative control as exercised through local acts with the central administrative control, we again see the superiority of the latter. Even during the period

¹ The figures for 1895 are still more favorable than those of 1892. See 25th Rep. of L. G. B.

² Rep. of L. G. B., S. P., 1874, Vol. 25, pp. 682-6, App.

from 1875 to 1880, when the Local Government Board rarely allowed the term to exceed fifty years, it was the exception rather than the rule for the time set by local acts to be below sixty years, and instances are given where it reached eighty-five, ninety, one hundred or even one hundred and ten years.¹ Liverpool in 1880 was granted the right to borrow £3,250,000 for terms varying from 60 to 70 years in length. Manchester was empowered to borrow £3,425,000 for 80 years, and the Birmingham Gas Act fixed a limit of 85 years. The bill providing for a system of water-works for the latter city approved 90, but Halifax outstripped all and was given until 1985 to repay a loan.² Although there may be some difference of opinion as to whether such undertakings should have been permitted, very few persons can be found who will support the authorizing of such long terms. But be that as it may, it is certain that as between central administrative control and legislative control the former has been much more efficient in keeping the local authorities within bounds, and exercises by far the more restrictive influence.

Pursuing the investigation further, we find that such extremely long periods are not permitted at present, and the reason is interesting. In 1872-3 the evils arising from the passage of local acts without debate, and usually without examination, began to be appreciated, and Parliament passed an order requiring all private bills in behalf of an urban or rural sanitary authority in respect to any purpose to which the Sanitary Acts relate to be referred to the Local Government Board for consideration and report.³ The effect of this plan was that defects were brought to light, attention was

¹ Rep. of L. G. B., S. P., 1878-9, Vol. 28, p. 84; *Ibid.*, 1882-3, Vol. 28, p. 74.

² See Reports of the L. G. B., especially 1880, S. P., Vol. 26, p. 482, App.; 1881, Vol. 46, pp. 61, 77. Also the *Edinburgh Review*, 1881, Vol. 153, pp. 553 *et seq.*

³ Report of L. G. B., S. P., 1873, Vol. 29, p. 51.

called to improper postponements of repayment, and much improvement was secured. At first progress was not rapid, but as the years passed, and as continued attacks of the Local Government Board upon improper provisions brought persons to perceive the wisdom of its position, the periods legalized in local acts have grown shorter and shorter. In 1883 the House of Commons passed a standing order limiting the time to 60 years,¹ which is usually followed, but now and then an authority secures an exception, as did the Stockton and Middlesborough corporations in 1884,² and Sheffield in 1887.³ But it should not be forgotten that for this important and highly beneficial change in the position of Parliament towards local acts England is indebted to the attitude of the Local Government Board.

What has been said applies, *mutatis mutandis*, to other matters which are involved in the negotiation and repayment of loans, *viz.*, sinking funds, the payment of interest regularly, the expenditure of the loan for the purpose ascribed, and the many other matters that are prescribed both by law and sound finance. There are several ways in which the central departments may force compliance. Under the Public Works Loans Acts, 1875-1882, the Local Government Board is required to satisfy itself that all loans advanced by the Commissioners to local authorities upon the security of rates have been applied to the objects for which they were secured. If it appears that such has not been done, the Board may issue an order directing the necessary corrections to be made, and if it is not complied with it may be enforced by a writ of *mandamus*.⁴ The Board may also order unex-

¹ Report of L. G. B., S. P., 1883, Vol. 28, p. 100.

² *Ibid.*, 1884-5, Vol. 32, p. 62.

³ *Ibid.*, 1888, Vol. 49, p. 123.

⁴ 38 & 39 V., c. 89, s. 35-38; 41 & 42 V., c. 18, s. 4; 45 & 46 V., c. 62, s. 8. The Education Department has similar powers relative to loans advanced to school boards.

pendent balances to be remitted to the Commissioners.¹ Since 1873, local acts and provisional orders, with very few exceptions, have provided for returns to be made, and if it appears that the provisions of the act relating to the loan have not been followed, the Board may issue an order enforceable by a *mandamus*.² By the same means the Board may enforce obedience to any of the conditions contained in the statutes or imposed by itself relative to the numerous matters involved in the negotiation and repayment of loans, the issuing of stock, or the management of sinking funds. Its powers are ample, both to obtain the information needed and to enforce its decisions, and while it receives many returns and investigates numerous cases, it is not often that it is compelled to issue orders or apply for a *mandamus*.

Besides this direct control, there is also an indirect control which is equally effective. This is to be found in the power of the Local Government Board to sanction or refuse to sanction a loan or the issuing of stock. Since the power is entirely discretionary, and the courts will not interfere except so far as to determine whether the Board is acting within the jurisdiction given by the law, the influence of the power is determined entirely by the attitude of the Board. If a local authority applies for a loan, the central authority may inquire into the previous actions of the locality, may find out whether sinking funds have been provided as required by law, whether principal and interest have been paid regularly and promptly, whether loans have been honestly and wisely expended, and in short what has been the whole history of the authority making application. If the record proves to be unsatisfactory, the central authority may refuse to approve the new loan until the de-

¹ 41 & 42 V., c. 18, s. 4; 44 & 45 V., c. 38, s. 9. £10,296 were remitted in 1895. 25th Rep. of L. G. B., 1895-6, p. 113.

² 25th Rep. of L. G. B., 1895-6, p. 111.

fects have been remedied, and thus force the local authority into conformity to the law and its orders. Of course escape can be had from this "dictatorial power" by securing a local act sanctioning the loan, and this is one reason why so much use has been made of this privilege.

The Local Government Board was not long in perceiving the power it possessed, and mention is made as early as 1874 of the many beneficial results following the adoption of the plan.¹ Nearly every report reiterates the statement,² and although the instances where resort is had to this method are greatly diminished, it formerly exercised a very powerful influence, which has now almost entirely become potential. It explains to a large extent why legal and sound financial rules have been so closely followed, and why present conditions are preferable to past. Its efficacy rests upon the great desire of the localities to undertake works and to pay for them through loans. Remove this factor and the control would be valueless.

In the case of the issuing of stock by the local authorities, the control exercised arises from the provision requiring the approval of the Board as to the various conditions of its issue, transference, redemption, *et cetera*, and from the desire to issue stock because of the many advantages arising therefrom.³ Its influence is seen from the fact that stock to the amount of £1,717,908 was authorized in 1895 to be issued.⁴

In all these plans, whether providing for a direct or indirect control, it must not be forgotten that whenever publicity is produced, it serves as a deterrent power. As long as the facts are not brought to the light, loose and corrupt methods may and will be employed, but the very probability that they

¹ Report of L. G. B., S. P., 1875, Vol. 31, p. 43.

² 25th Report of L. G. B., 1895-6, pp. 107-8.

³ 51 & 52 V., c. 41, s. 70; 53 & 54 V., c. 59, s. 53.

⁴ 25th Report of L. G. B., 1895-6, pp. 26, 110.

will be made public prevents their use whether statutory penalties are inflicted or not.

The question will undoubtedly arise, if indeed it has not ere this, whether or not central administrative control has kept the localities from making improper loans and from plunging too heavily into debt. The Local Government Board has claimed, as has already been said, that in all its inquiries (which are made previous to the approval or disapproval of loans) it has been particularly careful to ascertain whether estimates were excessive and the undertakings necessary. But little light is thrown upon the subject, unless we know what is meant by the terms "excessive" and "necessary." It may be stated, however, with no fear of contradiction, that the central government has done excellent work in preventing excessive estimates being made; but as to whether the purposes for which loans have been negotiated might be called necessary, depends very largely upon how far government should enter the field that has heretofore been considered as belonging to private enterprise, and to what extent the future should be mortgaged to construct or purchase waterworks, sewers, lighting plants, sewage disposal works, gas works, street railways and improvements. Since opinions differ so widely, it is impossible to arrive at any conclusion of scientific value. Some claim with great positiveness that local indebtedness is a sign of prosperity, that the money has been wisely and economically expended, and that the debt has been kept within bounds. Others just as positively adhere to the opposite view, point with alarm to the great increase of the last twenty-five years, and claim to see therein great folly and unwise expenditure. The opinion expressed by Mr. G. H. Blunden seems to be nearly correct.¹ "Whilst the rapidity of the recent growth," he says, "and the mag-

¹ *British Local Finance*, Pol. Sc. Quarterly, Vol. IX., p. 93, March, 1894.

nitude of the total of the local debt are, at first sight, somewhat alarming, there are reassuring facts which should also be borne in mind. In the first place, the greater part of the thirty-one and one-half millions [£] owing in respect to harbors, piers, docks and quays is not secured upon the local rates, and is not, therefore, a public liability in the ordinary sense. Then, too, the debt on gas works, water-works, markets and cemeteries is usually secured primarily upon the revenues of these undertakings, and is only a charge on the rates to the extent to which these revenues may be found insufficient to meet the payments for principal and interest. As these undertakings are mainly commercial enterprises which were originally in private hands, and were then sources of considerable profit to the owners; and as their acquisition has been, in most cases, deliberately undertaken in the public interest, it is fair to assume that, even in those cases where a charge falls upon the rates, there is a balance of advantage to the community arising out of the greater excellence or the lower price of the supplies or conveniences obtained. In the great majority of cases the public management of gas works is productive of considerable money profits, which are available partly for the redemption of the undertakings, and partly for the relief of the rates. This is less generally, but still very largely, the case also with water-works and markets, but cemeteries are at present a charge upon the rates in a large proportion of the cases in which they belong to the local authorities. This is chiefly due to the necessity for repaying a portion of the purchase money each year, and the present provision, as a matter of prudence for enlarged needs in the future, owing to the growth of population and the closing of the church yards."

It is thought best, however, not to leave the reader without some information upon which to base his own conclusions. A few statistics have been prepared, therefore; and

further detailed information can be found in the Annual Report of the Local Government Board and the Local Taxation Returns.

Comparing the figures for the past twenty years, it is found that the ratable value increased 39.3 per cent. from 1874 to 1894, that loans outstanding increased 141.5 per cent. from 1874-5 to 1893-4, and that loans sanctioned annually to urban and rural authorities increased 320.5 per cent. from 1874 to 1895. The ratable value is 83 per cent. of the gross estimated rental, and the amount of the total local debt for England and Wales per £ of the poor rate valuation was in 1894, £1 8s. 1 d., the Metropolitan local debt being £1 5s. 7 d., and the Extra-Metropolitan, £1 8s. 9 d. Combining these figures, it is found that the local debt outside of the Metropolis is 120 per cent. of the gross estimated rental. An examination of the indebtedness shows it to be distributed among the local authorities as follows:¹

Local Authorities.	1893-4.
Metropolitan	£43,191,998
Extra-Metropolitan—	
Poor Law Authorities.....	3,497,041
County Authorities	2,955,273
Municipal Corporations	13,465,729
Urban Sanitary Authorities and Joint Boards.....	109,005,488
Rural and Port Sanitary Authorities	2,062,658
Commissioners of Sewers.....	77,170
Commissioners of Baths and Washhouses.....	9,870
Markets and Fairs Commissioners	24,880
Drainage, Embankment and Conservancy Boards	2,256,453
Harbor, Pier and Dock Authorities	32,239,746
School Boards.....	13,168,106
Burial Boards.....	2,052,804
Highway Authorities in Rural Districts.....	40,063
Other authorities.....	111,091
Total.....	£224,158,370

¹ The statistics here given may be found in the appendix to the 25th Rep. of L. G. B., 1895-6.

If one wishes to consider the purposes for which these loans were made, the following classification is interesting :

Waterworks	£41,803,889
Harbors, piers, docks and quays	32,716,623
Highways, street improvements, turnpike roads, bridges and ferries	33,389,369
Sewerage and sewage disposal works, drainage, embankment, etc..	25,351,831
Schools	21,285,880
Gasworks and public lighting	16,996,658
Parks, pleasure grounds, libraries, museums, baths, washhouses, hospitals, lunatic asylums, police stations, jails, etc.	13,232,244
Markets, slaughter-houses and burial grounds	8,359,746
Poor law purposes	7,471,443
Artisans' and laborers' dwellings	4,336,517
Advances to Manchester Ship Canal Company	4,628,600
Tramways	1,433,744
Other purposes	13,151,826
Total	<u>£224,158,370</u>

During the same year, 1893-4, the aggregate receipts, excluding loans, of local authorities were £58,377,680, the principal items of which were :

Public Rates	£32,223,972
Treasury subventions	2,949,537
From Local Government Board out of the Local Taxation Account.	5,982,022
Tolls, dues and duties	3,507,937
Receipts from real and funded property (excluding sales)	1,732,962
Sales of property	381,474
Fees, fines, penalties and licenses	654,906
Revenue from waterworks	2,825,652
Revenue from gasworks	4,510,784
Revenue from markets, burial grounds, sewage farms and works, baths, washhouses, libraries, museums, lunatic asylums, hospitals, tramways, slaughter-houses, harbors, docks and piers (excluding above items)	1,227,725
Repayments in respect of private improvement works	1,020,577
Total	<u>£57,017,548</u>

The public local rates assessed by the principal local authorities in 1893-4 were as follows :

	s.	d.
England and Wales.....	4	0.5
Metropolitan.....	5	4.
Extra Metropolitan	3	8.3
Poor Law Authorities		10.8
County Councils—General County Purposes—Average		3.7
Town Councils acting as Municipal Authorities—		
County Boroughs		8.5
Other Boroughs		6.5
Town Councils acting as Urban Sanitary Authorities—		
County Boroughs	2	10.
Other Boroughs	2	8.
Local Boards and Improvement Commissioners	2	7.4
Rural Sanitary Authorities		2.4
School Boards—		
Boroughs in England.....		7.8
Parishes in England.....		7.7
Highway Authorities in Rural Districts		6.9

Such are the most valuable statistics which may be of use to the reader in forming his own conclusions. It is important, however, to keep in mind a few facts. Of the total loans outstanding, nearly two-tenths have been incurred for water-works, one-tenth for sewerage and sewage disposal, one-tenth for schools, and nearly another tenth for public lighting. If the money has been honestly expended, and this fact is not disputed, these figures would indicate that the loans have been incurred for desirable purposes. Comparisons will also show that rates are not excessive and that the proportion of indebtedness to property value is not high. No doubt the great increase in the last thirty years is not due alone to the desires of the local authorities, but partially also to the large amount of money seeking investment and the rapidly-increasing wants of city life. Before forming a final opinion, it is necessary to consider the effect of local legislation upon the amount of indebtedness.

5. *Influence of Local Legislation.* Throughout the entire consideration of English local government, one must never

forget that Parliament has power to pass not only general acts but also what are known in this country as "special acts," or in England as "local or private acts." The mere existence of this power would not be of so much importance were it not that it has been so widely exercised that there is no field of local government but has felt its influence.

Although the origin of local legislation was centuries prior to 1865, it was not until after this date that it began to play an important part in that portion of local financial affairs in which the system of central administrative control is found. The cause of the frequent resort to local acts has been the great desire to make loans and the opposition of the local authorities to being required to secure the consent of a central authority. A longer period of repayment could be secured by a special act, purposes of a questionable character would be approved, easier methods of repayment would be sanctioned, the past actions of the officers would not be examined minutely, and it was comparatively easy to get a bill passed by Parliament granting their desires. Private bills received very little attention.

About 1872 Parliament recognized the evils of this plan and passed an order requiring the submission of all private bills concerning urban and rural sanitary authorities to the Local Government Board, which was to examine them and report. This method has been followed ever since and has tended to check the abuse, but the practice was so deeply rooted that years passed before great improvement was manifested. In 1874, thirty of the thirty-three private bills submitted contained "undesirable provisions and omissions."¹ Of the ascertained amounts authorized by Parliament during the same year to be borrowed without the consent of the Local Government Board, only .4 per cent. were for terms less than fifty years and seventeen per cent. were for eighty years.

¹ Rep. of L. G. B., S. P., 1875, Vol. 31, p. 46.

The report of the Local Government Board for 1877-8 contains this statement of the facts:¹ "In the majority of cases the periods during which it has been proposed that they [the loans] should remain a charge upon the rates have appeared to us to be unduly prolonged; the provisions for securing their repayment have frequently been defective, and there has been a prevailing tendency on the part of the promoters to postpone the commencement of the sinking fund until the expiration of some years after the raising of the loan. In several instances the local authorities have attempted to create a permanent charge upon the rates, by the issue of perpetual annuities without any obligation to set aside a sinking fund for their redemption, or any power to require the annuitant to allow them to be redeemed. We have also noted objectionable proposals as to rating; the absence of proper provisions for the keeping of separate accounts in respect of capital and revenue expenditure and for the application to capital purposes only of the proceeds of the sale of surplus lands and other property; provisions at variance with the general law; unnecessary provisions; ambiguities of expression; undesirable sanitary and local government regulations; and omissions to provide for the adjustment of the outstanding liabilities of authorities effected by proposed alterations of sanitary areas." The tide seems to have reached its highest point about 1880. Several instances of extremely long periods have been given, and these are not the only ones.² In 1877, ninety-nine per cent. of the loans (in amount) permitted by local acts were for fifty years or over.³

These were the evils that the Board undertook to combat, and up to the present time about half a hundred private

¹ S. P., 1877-8, Vol. 37, p. 85.

² Rep. of L. G. B., S. P., 1881-2, Vol. 30, p. 120.

³ *Ibid.*, 1878, Vol. 37, pp. 69, 70.

bills have been examined every year with the best of results. Even in 1884 the extremely long periods were not so frequent, and the per cent. running for fifty years or over was reduced to seventy-nine.¹ In 1883, another step was taken in the right direction when the House of Commons passed a standing order providing that the statutory limitation in the sanitary acts—sixty years—should be applied to all local acts.² This has been quite strictly adhered to, and although there are a few extraordinary cases which are excepted from the rule, it is rarely that the period now exceeds sixty years. The “undesirable provisions and omissions” found in the earlier acts have also disappeared, and while the periods are not as short as those approved by the Local Government Board, nor the acts as wisely modeled in many other particulars as the schemes approved by the Board, yet there has been great improvement for which the Board should receive the highest praise.³ Its success in inducing Parliament to adopt the rules of procedure, and its careful and thorough consideration of all acts submitted to it, are the chief causes of the transformation. English experience definitely proves the superiority of an administrative authority over a legislative authority when financial bills are to be considered that involve no questions of legislative policy but merely questions of expediency.

The importance of this plan of permitting loans to be made without the consent of a central authority, except as its opinion is obtained through a report upon the bill, will begin to be appreciated when it is known that whereas the Local Government Board has sanctioned since August 19, 1871, to urban and rural authorities loans amounting to

¹ Rep. of L. G. B., S. P., 1884-5, Vol. 32, pp. 61, 62.

² *Ibid.*, 1883-4, Vol. 37, pp. 101-2.

³ In some instances where borrowing power is conferred by a special act, the consent of the Local Government Board is required, but the number of such cases is not large.

£73,102,031, Parliament by local acts has permitted town councils or sanitary authorities to loan £69,161,066 of ascertained amounts, to which must be added a large sum for undertakings whose cost was unknown, but which were legalized, and the expense of which was to be defrayed by loans.¹ The construction of gas works was authorized, for instance, but as the cost was unknown it was not specified. Just what sum should be allowed for this sort of items is a matter of conjecture, but comparing various estimates it seems to be a *very* conservative estimate to place the total amount sanctioned to town councils and sanitary authorities at £100,000,000.² It is also probably true that nearly one-half of the present local indebtedness has been authorized by local acts which did not require the consent of any central administrative authority.

The subject is of great importance for another reason, which will explain why resort has been had so often to local acts. In previous paragraphs no explanation was offered why, in the earlier years especially, the Local Government Board occasionally approved long periods, sometimes sanctioned schemes for repayment which were somewhat questionable, and gave consent to some purposes which possibly might better have been omitted. The causes are two-fold.

At first the central authorities were apt to be somewhat lenient, because of the considerable opposition to the construction of undertakings that were absolutely necessary to the preservation of public health, and because it was only upon the most favorable terms that local authorities could be induced to incur debt. But why should somewhat of laxity have remained after the attitude of local officials had changed? An explanation is to be found in the position of

¹ 25th Rep. of L. G. B., 1895-6, pp. 101, 108.

² The Report of the L. G. B. for 1877 estimates the unascertained amounts as equal to the ascertained. Cf. S. P., 1877, Vol. 39, p. 59.

Parliament. It has been seen that the terms secured by local acts have always been more favorable (from the point of view of the local authorities) than those approved by the central administrative authorities. The periods have been longer, the methods of repayment easier, and the purposes broader. Thus the central authorities, especially the Local Government Board, saw that if they imposed too rigid conditions, more and more recourse would be had to local acts. They perceived it would be impossible entirely and suddenly to change the attitude of Parliament, that abundant use was being made of local legislation, and that many localities were escaping from their control almost entirely. It was thought better, therefore, to be somewhat lax and secure some control, if it were not possible to exercise all the supervision that seemed desirable. Half a loaf was certainly better than no bread. But as has been seen, the position of Parliament has been changed to accord more closely to the central authorities, which has resulted in an actual increase of their powers, and consequently recent conditions are nearer the ideal than formerly.

The conclusion is, therefore, that whatever view we may take of the proper sphere of governmental activity, central administrative control has been more restrictive in its tendencies than legislative control whether exercised through general or local acts. The experience has been the same whether the amount of indebtedness, the periods and methods of repayment, or the enforcement of statutory provisions and sound financial principles are considered. In every case the superiority of administrative over legislative control is established, and although the latter can never be removed, it should only be appealed to in exceptional instances, as is coming to be the case in England.

CHAPTER VII

CENTRAL AUDIT

IN the preceding chapter, it was seen that the central authorities, especially the Local Government Board and Education Department, had been intrusted with the duty of seeing that loans advanced by the Public Works Loans Commissioners were expended for the purposes indicated; also that through the power of inquiry and the determination to refuse to sanction loans if improper methods were found in past financial transactions, they had brought force to bear to prevent the illegal use of money. A writ of *mandamus* could also be secured to enforce statutes or orders. Although a potent control was thus established, there were many loop-holes in the system and the legitimate expenditure of funds was not always guaranteed. Over expenditure from rates there was little control, and where income was derived from property, which is coming more and more to be a most important factor, there was no guarantee provided. The misapplication of loans not subject to central approval could be prevented only through the indirect methods just noted. It is evident therefore, that there was no further control provided than is described in the preceding chapter, the system would be radically defective. This was especially true previous to 1875, when the present indirect control derived from the requirement that loans be approved by central authorities had not become of value. As regards the use of a *mandamus*, it must be remembered that government inquiries into local affairs are not favored, that in

practice this method is not as effective as it would be in continental countries with their strong centralized governments, and that it has not been frequently exercised.

The history of the various methods of auditing accounts is interesting and important, as it points out the errors to be avoided, shows how a system of local audit has been ineffective, and demonstrates that central audit is the logical outcome of central control. Such is the excuse, if excuse there must be, for a brief history of the various systems of audit since 1834. The field of poor laws is chosen because it is the oldest by far, because around it the other fields of local government have been clustered, and because their brief history almost duplicates that of poor relief.

Conditions Previous to 1834. To ascertain and comprehend the system—if indeed it can be called a system—of auditing the accounts of the poor law authorities previous to 1834, it is sufficient to begin with the 43d Elizabeth, caption 2, which declared that the churchwardens and overseers “shall within four days after the end of their year, . . . make and yield up to such two justices of peace as is aforesaid, a true and perfect accompt of all sums of money by them received, or rated and assessed and not received, and also of such stock as shall be in their hands . . . and such sum or sums of money as shall be in their hands shall pay and deliver over to the said churchwardens and overseers newly nominated and appointed as aforesaid¹ . . . Any such two justices of peace to commit to the said prison every one of the said churchwardens and overseers which shall refuse to accompt, there to remain without bail or mainprize until he have made a true accompt, and satisfied and paid so much as upon the said accompt shall be remaining in his hands.”² The remedy provided for any one who thought himself aggrieved because of any tax or act of the church-

¹ Section 1.

² *Ibid.*, 3.

wardens, justices of peace, or other officers, was an appeal to the court of quarter sessions, which might make such disposal as seemed best.¹ To enforce the payment of all balances, as well as all other sums of money due, two justices were given power to levy by distress and sale on the offender's goods, and in case these were insufficient, to commit to jail until paid.²

The practical results of this provision do not appear to have been at all satisfactory, for the 17 Geo. II., c. 38, complained of the frequent misapplication of rates, and undertook to remedy the numerous defects by requiring all books to be submitted to the inspection of the rate-payers upon the payment of a fee of six pence.³ "One or more justices" was substituted for the "two" to whom accounts were to be submitted according to the preceding act.⁴ The privilege of appeal was extended to anyone having "any material objection to such account," which phrase was construed very liberally.⁵ From these and many other less important provisions, it is evident that the whole tendency of the act was to make it easier for any interested person to prevent misapplication and the payment of illegal charges.

Notice should be taken that in neither of these acts was mention made of any power to *disallow* improper expenditures, except as an appeal was brought before the court of quarter sessions. The only other important power touching the system of audit was the power to imprison until a true account was submitted; but as no mention is made of any legal right to demand the submission of extrinsic evidence, it was practically impossible to detect any fraud, except grossly improper returns. It was not until sixty-six years later that a general law proposing to remedy these defects

¹ Section 6.

² *Ibid.*, 3.

³ *Ibid.*, 1.

⁴ *Ibid.*, 1.

⁵ S. 4. *Rex v. Justices of Somersetshire*, 7 B. & C., 681 N. Also *Rex v. Guyer and Manly*, 4 N. & M., 158.

enacted that two or more justices should be empowered "to examine into the matter of every such acct., . . . and to disallow and strike out of every such acct. all such charges and payments as they shall deem to be unfounded, and to reduce such as they shall deem to be exorbitant."¹ For refusal to abide by the decisions, the previously established penalties—commitment to jail and warrants of distress and sale—were continued, but appeal could be made to the court of quarter sessions as well by the churchwardens, overseers and other officers affected,² as by those entitled to do so under the two foregoing acts.

It must be borne in mind that these laws did not apply uniformly to all England. Numerous local acts very frequently established other systems of audit, which were so varied that no general scheme can be presented, and which were unaltered by these general acts. One similarity is manifest however, for in the vast majority of cases the auditing—such as it was—was conducted by the local authorities themselves or by some person or persons selected by them.

That the previously-mentioned systems were wrong in theory need hardly be stated. Very possibly they were the best that could have been adopted without radical changes in the methods of administration, yet the fact of their failure remains, and the reasons are obvious. Every plan involved an audit either by the very persons, or by subordinates chosen by those whose accounts were to be examined. The positions and habits of the justices, the differences of opinion that often arose, the long, intricate and confused accounts, the hurried inspection at quarter sessions, furnish sufficient explanation for the incomprehensible conditions that were found to exist. It must not be thought that no efficient audit could be found in any locality prior to 1834, for there were isolated instances—exceedingly few in number—where

¹ 50 Geo. III, c. 49, s. 1.

² *Ibid.*, 2, 3.

the expenditure of every shilling was closely scrutinized, the result of which was to keep the poor-rate at a very low figure.¹ But viewing the country as a unit, the report of an assistant commissioner may be considered as a very representative picture. "To talk of auditing and examining parish accounts is in nine cases out of ten a perfect mockery. It is true that in some parishes they are said to be examined half yearly, and in others quarterly; but the fact is that in the great majority of parishes a meeting of parishioners is convened at the end of the year to examine the overseer's accounts previous to being passed by the magistrates. This is the only examination they undergo. A whole year's account, consisting of hundreds of items, and, in general, obscurely arranged, is professed to be investigated in the course of a few hours to the satisfaction of a most intelligent and scrutinizing audience, the majority of whom are in all probability friends and partisans of the overseers! After this solemn and public audit by the parish, they are submitted to the magistrates, are sworn to by the overseers, and the signature of magisterial approbation is affixed as a matter of course, without examination, perhaps without even a cursory glance. . . . The present system (if system it can be called) offers an almost irresistible temptation to dishonesty, by rendering the chances of detection extremely difficult if not impossible."² Is it surprising that from one-seventh to one-fourth of the whole expenditure was either illegal or fraudulent in many cases?³

Reform of the Poor Law Amendment Act. From the foregoing portrayal of the existing conditions, the present inves-

¹ Cf. 1st Rep. of P. L. C., pp. 171-2.

² Rep. of an assistant commissioner appointed by the P. L. Com. of 1832-4. S. P., 1834, Vol. 28, p. 666, App. A.

³ *Vide* Reports of Asst. Com. to P. L. Com., published in S. P., 1834, App. A. to F., Vols. 28 to 39. Two examples may be found in Vol. 28, pp. 426, 912.

tigator is as easily convinced of the need of reform as were the Poor Law Commissioners. Among the many problems demanding imperative solution at that hour, that of an efficient method of audit was somewhat lost sight of; but even if it had received more attention, it is very unlikely that a more centralized system would have been adopted. It was with extreme difficulty that a central *supervisory* authority was introduced into poor law administration, and this was only permitted after nearly every other scheme the brain of man could devise had been tried and proven a failure. The apparent hopelessness of the case, the appalling condition of the laboring classes, the deterioration of industry, only such factors were of sufficient force to convince the members of Parliament that a system of central control was expedient, necessary, imperative. The appointment of local authorities by a central board was something the average Englishman would hardly have tolerated, and the popularity of the justice of the peace would have prevented any serious inroads being made into his sphere of administration. These facts, coupled with the natural conservatism of all Teutonic races, prevented an immediate change from the ill-constructed system then in force to the efficient administration evolved within the next forty years. Although progress has since been rather rapid, a thorough comprehension of the spirit of the times causes the step taken in 1834 to appear gigantic and not insignificant, as one might conclude when viewing the question in the light of present opinions, theories and ideas.

The Poor Law Amendment Act of 1834 gave the Commissioners power to direct the overseers or guardians of a parish or union "to appoint such paid officers with such qualifications as the said Commissioners shall think necessary . . . for the examining and auditing, allowing or disallowing of accounts in such parish or union." The commis-

sioners were further given the power to define the duties of such officers, delimit their sphere of action, determine mode of appointment, regulate amount of salaries, and dismiss from office.¹ Every person having the collection, receipt or distribution of moneys assessed for the relief of the poor, or any documents, goods or chattels relating thereto, was required once in every quarter to submit to the authorized auditor a full account of all funds and goods committed to his charge.² As to what were illegal expenses, the Act declared "that all payments, charges and allowances made by any overseer or guardian and charged upon the rates for the relief of the poor, contrary to the provisions of this Act, or at variance with any rule, order or regulation of the said Commissioners made under the authority of this Act shall be and the same are hereby declared to be illegal, any law, custom or usage to the contrary notwithstanding."³ The Act in no way repealed the pre-existing yearly audit by the justices of the peace, and any illegal charge or allowance *might* be disallowed by them. Even the disallowance of an auditor could be rescinded by justices in petty session.⁴ Local acts were left undisturbed except when they conflicted with the present Act, with the result that two systems were in vogue in some parishes, but the decision of the auditor acting under the direction of the Poor Law Commissioners took precedence in case of conflict.⁵ As to remedies, nothing was

¹ 4 & 5 Wm. IV, c. 76, s. 46.

² *Ibid.*, 47.

³ *Ibid.*, 89. A perusal of expenditures shows that the practice attacked in the last phrase had grown to large proportions, and remnants are found even in recent years. Charges for the extirpation of sparrows, moles and other vermin, for marrying paupers, for champagne dinners and entertainments for local authorities, are not infrequent. The only reason offered to justify such expenses was that they always had been borne by the parish or union, and therefore ought to continue to be. Cf. H. C. Stephens, *Parochial Self-Government in Rural Districts*, pp. 249-284; also 1st Rep. of P. L. C.

⁴ *Regina v. Earl of Dartmouth and others*, 5 A. & E., New Series, 876.

⁵ *Vide Regina v. Governors of St. Andrew's, etc.*, 6 Q. B., 78.

said, and the former provisions remained in force. Appeals against the allowance or disallowance of any officer could, as before, be made to the court of quarter sessions.¹ In the case of balances shown to be due, it was the duty of the auditor to begin proceedings to enforce payment after having reported the same to the Poor Law Commissioners and after having received directions from them.²

Such was the system as established by law. How did it actually operate? Immediately after organization the Poor Law Commissioners issued an order directing the guardians at their first meeting, or within one month of that time, to appoint a competent person as auditor. Four dates were named within thirty days of which all accounts should be submitted for audit. The board of guardians was also permitted to determine the amount of salary with the consent of the Commissioners. As to tenure, it was stated that an auditor, once duly appointed, should remain in office until removed by the Commissioners or by the board of guardians with the consent of the Commissioners.³ It will be noticed that this is a slight departure from the plan which might have been expected to have arisen from the provisions of the law. It would have been perfectly proper and natural had the Commissioners not granted the initiative in the fixing of salaries or the dismissal of auditors. This distinction is more than a theoretical one, for the local authority would be much more apt to secure its desires if it proposed schemes for approval, than if it was allowed no liberty in this direction. In the matter of salaries much freedom was in reality allowed, but the fact that the central board had the power to fix them kept the local authorities from rendering the whole system void by placing the remuneration so low that an efficient person could seldom be secured. As to the

¹ Reg. v. Geo. Watts, 7 A. & E., 461. ² *Vide* 2d Rep. of P. L. C., 1836, p. 62.

³ 1st Rep. of P. L. C., 1835, p. 86.

power of removal, the guardians seldom if ever tried to exercise it.

That the system should have a fair trial and that the best results possible should be attained, the Poor Law Commissioners issued numerous instructions from time to time specifying the exact forms of all kinds of statistics, accounts and papers required to be kept or issued. The exact number and kinds of books, the precise headings and the specific methods of keeping were prescribed. Directions were given the auditors to see that the proper forms were followed, that all important papers were submitted, that every expenditure was legal, and that all sums received or that should have been received were accounted for. Circulars interpreting the law, declaring what charges were illegal, specifying methods of conducting audits, in fact giving directions upon all subjects likely to cause disputes or upon which the law was vague, were issued.¹ Everything possible was done by the Poor Law Commissioners to secure an efficient system, and for defects no blame can be attached to the central authority.

That a great advance was made has never been questioned, but vital defects existed, and the system was far, far from perfect either in theory or practice. The method of local appointment failed to secure persons who were not influenced by local and personal interests. It was expected that, although the auditors were chosen by the guardians, the fact of their being removable by the Poor Law Commissioners alone would destroy all feeling of local responsibility and would make them independent, impartial enforcers of the law. But such expectations were not realized. The auditor did not forget by whom he was appointed, and if he seemed to be doing so, a reminder was forthcoming. The feeling of responsibility to

¹ The orders were so numerous that specific references would be impracticable. Consult Reports of P. L. C. The first ones issued may be found in 1st Rep., pp. 117 *et seq.*

the authority electing was so prevalent and so firmly imbedded in the political mind that even the lack of any method of enforcing it by law was insufficient to counteract it. Illegal charges were allowed contrary to express orders.¹ Guardians avowed they were not subject to the decision of the auditor except from choice, and one case is mentioned where an auditor resigned because of the local animosity a disallowance of illegal items had excited, for he was thus "placed in the disagreeable position of being obliged to act in a manner which he knew to be displeasing to those who, by electing him, had conferred a favor upon him."²

The other defect was one arising from the small size of the district over which the auditor was in practice compelled to preside. It is true that some power to obviate this difficulty was conferred, whereby the Poor Law Commissioners were authorized to combine unions for the appointment of auditors,³ and in some cases this was done, but the great difficulty of arranging for an election by a number of boards of guardians, and of giving each union its proper relative importance, prevented a widespread application of this power.⁴ The result was that a very small compensation was allowed the auditors, averaging slightly less than £22 for the year 1842.⁵ Although a fair reward for the labor expended, it necessitated the selection of persons who had other occupa-

¹ Rep. of Select Committee, S. P., 1837, Vol. 18, Q. 2796-2804.

² 10 A. & E., 134, 1839; Rep. of P. L. C. to Marquis of Normanby, 1840, p. 82. One reason urged for the quashing of an indictment against overseers who failed to submit accounts to the auditor was that he was their servant, and hence subject to their action.

³ 4 & 5 Wm. IV., c. 76, s. 46.

⁴ *Vide* Rep. of P. L. C. to Marquis of Normanby, 1840, p. 83. Also S. P., 1846, Vol. 19, p. 13. In 1842 there were 454 auditors distributed among 585 unions, which shows how infrequently an auditor was elected by more than one union. See also S. P. (272), 1844, Vol. 40.

⁵ Rep. of P. L. C., S. P., 1846, Vol. 19, p. 13.

tions to which they devoted nearly all their time and attention. The truth was soon realized that the many difficulties confronting, the wide experience necessary to disentangle the long, intricate and confused accounts, the complete knowledge of the statutes, of the practices and transactions of the guardians, overseers and other officers required a person of peculiar fitness and ability, and one who devoted much time and energy to the performance of the task. Such persons were not and could not be obtained at a salary of \$100 per year, and the result was the choice of inefficient auditors. But the question may be asked, why did not the Commissioners, since they had the power, increase the salary to a sum that would induce competent persons to accept the position? To have multiplied the amount paid by each union from ten to twenty times—which was requisite—would have brought down such a storm of condemnation upon the heads of the Commissioners that their existence would have been summarily cut short. It was extremely difficult, as it was, to convince the majority of the voters that a central authority ought to be maintained. Thus, practically, there was a very serious limit to the power of the Commissioners.

One might be led to infer from what has been said that no zealous auditors existed, but such was not the case. There were isolated instances where a remarkably efficient person had been elected,¹ but the following recommendation made to the House of Commons reflects the condition of the vast majority of parishes: "It is essential that he [the auditor] should be removed from any local influence, and above any temptation to abuse his trust. Your Committee are of the opinion, therefore, that it would be desirable that

¹ One example is cited in the Rep. of a Select Com. upon the P. I., A. A., S. P., 1837, Vol. 17, Part I., Q. 880-893. He received a salary of 12 guineas for auditing the accounts of 11 parishes.

the auditor should not be confined to one union, but act for a large district, and that . . . it would be better that he should be appointed by the Commissioners than by the Board of Guardians."¹

To remedy the foregoing defects, has been the purpose of every act dealing with the audit system since 1834. In general the practical results have been improving, and as the discussion of each successive act would bring out few new principles or effects, it is deemed sufficient to note the development as included under four divisions, and finally show the effects of the system as it exists to-day.

Tenure and Method of Appointment.—No change has been made in the method of removal, either in theory or practice, and the position is retained as long as efficient service is rendered, or until the auditor resigns. Only in extremely rare cases has the central authority exercised this power of dismissal.² The method of appointment upon the contrary has passed through many stages of development. When the first change was made in 1844, it was considered to be too radical and too centralizing to transfer the appointment of auditors to the Poor Law Commissioners, but to make their powers of some practical utility and to secure some independence, the chairman and vice-chairman, or in case these did not exist, two elected overseers of each board of guardians were empowered to appoint an auditor.³ This step was of much practical benefit, although the policy of the Commissioners to retain in their positions every auditor who had proved himself competent, and the existence of whose district did not seriously retard the general establishment of proper districts throughout the whole country, prevented as large districts being formed as should

¹ Rep. of P. L. C. to Marquis of Normanby, 1840, p. 81.

² Rep. of Select Com., S. P., 1862, Vol. 10, Q. 3495-3498.

³ 7 & 8 V., c. 101, s. 32.

have been.¹ But there were only two courses open. Either the preceding plan should be adhered to or entirely new divisions should be made, and new elections held for auditors everywhere. It was wisely decided that this latter method would probably result in the choice of entirely new men, which would be a greater loss than small districts. As it was, there were in 1846, 50 districts containing upon an average 12.38 unions—a great increase over the number previous to this act.² The effect upon salaries and the result accruing therefrom will be discussed in another place.

The new system of selection did not, however, produce the desired transformation in the relations between the auditors and the local authorities. It cannot be denied that some bonds were severed, that some independence was gained, and that there was a slight tendency to break down the principle of local responsibility; nevertheless, there was still that feeling of the accountability of an elected officer to his electors which had been so injurious to the former system. The auditors who were so successful as to be appointed were frequently those who had the most local influence, and revenge was sometimes vented upon the persons opposing.³ Their ideas of what constituted an illegal charge were apt to be the same as the guardians, and the requirement of the law to disallow all expenditures not expressly sanctioned by a statute was often utterly disregarded. This was not due *wholly* to the method of appointment, but partially to the lack of technical knowledge, which fault experience would tend to remedy. Upon the whole, this provision of the Act of 1844 was a decided gain, but what benefits did accrue were due largely to the integrity, experience and good judgment of the chairmen and vice-chairmen.

Such was the method of appointment until 1868, when

¹ 11th Rep. of P. L. C., 1845, p. 20.

² 12th Rep. of P. L. C., p. 119, App.

³ Rep. of Select Com., S. P., 1862, Vol. 10, Q. 1506-1508.

another step was taken towards the goal of complete independence, by authorizing the Poor Law Board to appoint persons to fill all vacancies as fast as they occurred.¹ But the climax was reached eleven years later when the question was completely settled as to whether the auditor was an agent of the local or of the central government. The 42 & 43 Vict., c. 6 empowered the Local Government Board to appoint, with the sanction of the treasury, as many auditors as thought necessary and likewise fix their salaries,² and such is the present status of the method of appointment.³

Arrangement of Districts and Salaries.—These two subjects, apparently widely separated, are, in this discussion, inseparably bound together, as has been shown, for only by the increase of the size of the district has it been practically possible to increase salaries, except within very narrow limits.

There were, just previous to 1844, as has been pointed out, nearly 450 district auditors, receiving upon an average about \$100 per year. Subsequently, owing indirectly to a change in the system of election,⁴ the number was decreased to fifty and the salary increased to \$1,300, without materially altering the contribution of each union.⁵ The results of this change were highly beneficial. The salary was sufficient to induce abler men to accept the position. Their districts were usually not so large and important as to demand all their time and attention,⁶ but their duties had increased

¹ 31 & 32 V., c. 122, s. 24.

² S. 4.

³ This plan was recommended by a Parliamentary Commission as early as 1862. S. P., 1862, Vol. 10. Likewise in S. P., 1864, Vol. 9, pp. 17-18.

⁴ 7 & 8 V., c. 101, s. 32.

⁵ 12th Rep. of P. L. C., S. P., 1846, Vol. 19, p. 119, App. The number of unions had increased slightly—34. In 1859, the number of auditors was 54, but 5 of these were appointed for Metropolitan districts under local acts, which prevented their union with other parishes in audit districts. Rep. of P. L. B., S. P., 1860, Vol. 28, p. 24.

⁶ Salaries varied from £83 to £523. Rep. of Select Com., S. P., 1862, Vol. 10, Q. 2180.

so greatly that other occupations were not all-absorbing and their increased experience enabled them to detect errors, disentangle intricate accounts, and ferret out the illegal charges often hidden within. However, the exacting requirements were not yet completely met. While it is true that more competent men might, and probably would, have been secured had they been appointed by a central authority, the fact still remains that the salaries were inadequate to induce men of requisite ability and determination to accept the position.¹

The changes in the method of payment are interesting to note, as the growth of centralizing tendencies is thereby shown. Until 1847, the expenses of salaries had been defrayed by the localities directly, but at that date the method of yearly appropriations by Parliament was begun.² A slight change was made in 1868, when the Treasury was given the power of determining the amount to be set aside for this purpose from moneys voted by Parliament.³ These remarks apply only to poor law officers, and as it had been the custom to extend the sphere of the district auditor from time to time and to leave to the local authorities the determination of the sums they should contribute, manifestly unjust discriminations had sprung up. For instance, many urban sanitary authorities paid nothing for the services rendered.⁴

When the final re-organization came, in 1879, all payments from local rates were abolished, and sums set aside by the Local Government Board with sanction of the Treasury were substituted. Stamp duties were levied upon all authorities whose accounts were subject to audit, varying according to the amount of expenditure, the purpose being to thus furn-

¹ Rep. of Select Com., S. P., 1862, Vol. 10, Q. 1170, 8891-8903, 8907-8916, 8930-8933.

² 10 & 11 V., c. 107, s. 18.

³ 31 & 32 V., c. 122, s. 24.

⁴ Rep. of P. L. B., S. P., 1880, Vol. 26, p. 49.

ish a sufficient amount to pay the salaries and other attending expenses.¹ Such, the system remains to-day; salaries have been greatly increased, yet the burden upon the locality is little more, if any, than it was in the decade subsequent to 1834, when a very imperfect system existed.

Powers of Auditors.—The history of legislation dealing with the powers of auditors is a description of a constant increase of authority. The first important change subsequent to 1834 was mainly an indirect one. Although their position was strengthened by increasing the powers of investigation, of securing evidence and of surcharging for loss in case of negligence, the repeal of the power of one or two justices to examine, allow and disallow accounts after having been passed upon by the district auditor increased his importance very materially.² His decision thus became final, unless appealed to the Court of Quarter Sessions or to the Court of the Queen's Bench. The duty of enforcing the payment of balances was also imposed upon him,³ but the proceedings were expensive, and frequently the justices would permit objections irrelevant to the merits of the case or mere technicalities to warp their decisions.⁴

To remedy these defects, clauses were inserted in the Act of 1848 which simplified very materially the proceedings needed to be taken against persons liable to be surcharged and the amount of proof needed to recover sums certified to be due.⁵ The effects are obvious. A decrease in the probability of escaping payment obliged the local authority either to desist from making the improper expenditure or be prepared to sustain it personally, for the district auditor was

¹ 42 & 43 V., c. 6, s. 2, 4, Schedule; Rep. of L. G. B., S. P., 1880, Vol. 26, pp. 47-8.

² 7 & 8 V., c. 101.

³ *Ibid.*, s. 32.

⁴ Rep. of P. L. C., S. P., 1847, Vol. 28, p. 15; *Ibid.*, 1848, Vol. 24, p. 8.

⁵ 7 & 8 V., c. 101, s. 5, 7, 8, 9.

very, very unlikely to allow an item previously disallowed, and either of the two courses meant a gain to the rate-payers.

Since the time of the establishment of the Poor Law Commissioners, the Local Government Board has come to have an extremely large control over the auditors. Within certain very wide limits the central authority has power to fix the time and number of audits, the rules and regulations to be followed as to form and method, the number and kinds of reports to be made; but as to individual application, no step has been taken towards interference as to the allowance, disallowance or surcharge of any account, or any other application of the law. There is a partial exception made by a law enacted in 1887,¹ which provided that the expenses of a local authority should not be disallowed if they had previously been sanctioned by the Local Government Board. The reason for thus permitting appeal before action was taken by the auditors was that much irritation had been caused by the strictness with which they had adhered to the law in cases where their decisions were perfectly legal but when justice demanded contrary conclusions.² It is much more convenient and saves time to get the expenditure sanctioned before submission to the auditor than after, and many avail themselves of this privilege.³

Since 1834, when the field was limited to the accounts of the poor law authorities, there has been an immense increase in the sphere of activity. The list of authorities whose accounts are now subject to examination and review comprises: the poor law guardians and officers, including rural district authorities;⁴ managers of school districts

¹ 50 & 55 V., c. 72.

² Hansard, *op. cit.*, Vol. 321, p. 215.

³ During the year 1888 the Board received 490 applications, of which 404 were approved. In 1895, the numbers were 1,790 and 1,586, respectively. Rep. of L. G. B., S. P., 1889, Vol. 35, pp. 100, 147; 25th Rep. of L. G. B., 1895-6, p. 650, App.

⁴ 38 & 39 V., c. 55, s. 245, 246, 247, 250; 39 & 40 V., c. 61, s. 37, 38; 56 & 57 V., c. 73, s. 58.

under Poor Law Amendment Act, 1844;¹ managers of metropolitan asylum districts;² urban district authorities other than town councils;³ school boards;⁴ highway boards and other highway authorities;⁵ parish councils and parish meetings;⁶ county councils,⁷ and a few town councils by special acts.⁸ Besides these there are authorities provided for by other laws⁹ and other acts may be adopted,¹⁰ but the system includes every authority empowered to raise money by local rating, and the only important exception is that of municipal boroughs, which have retained their right to choose their own auditors.

Appeals.—From the time of the passage of the 43d Elizabeth down to the forty-fourth year of this century, the court of quarter sessions had the power to determine appeals brought against the decisions of auditors. At this date this ancient practice was done away with, because of the tendency on the part of the justices to interfere with the work of the auditors, and almost nullify the reforms they were trying to accomplish. In its place, the right was given to any person aggrieved of applying to the Court of the Queen's Bench for a writ of *certiorari* to remove into such court such allowance, disallowance or surcharge.¹¹ The privilege of applying to the Poor Law Commissioners for their decision upon the lawfulness of the reasons as set forth by the auditor for his decision, was also permitted.¹² This plan of securing an expert opinion upon the legality of an act with a trifling cost, was taken advantage of in many instances, and although

¹ 7 & 8 V., c. 101, s. 49; 42 V., c. 6. ² 30 & 31 V., c. 6, s. 33, 34; 42 V., c. 6.

³ 38 & 39 V., c. 55, s. 245-7, 250. ⁴ 33 & 34 V., c. 75, s. 60.

⁵ 41 & 42 V., c. 77, s. 9; 45 & 46 V., c. 27, s. 7, 8.

⁶ 56 & 57 V., c. 73, s. 58. ⁷ 51 & 52 V., c. 41, s. 71; 53 V., c. 5, s. 278.

⁸ 25th Rep. of L. G. B., 1895-6, p. 129. ⁹ *Ibid.*, p. 650, App.

¹⁰ See for example, Public Libraries Commissioners, *Ibid.*, p. 129.

¹¹ 7 & 8 V., c. 101, s. 35.

¹² *Ibid.*, 36.

the decision of the Poor Law Commissioners was neither directly upon the issue at stake nor final, it was almost always followed, for the decision of the Queen's Bench usually coincided.¹

This new attribute was the precursor of a genuinely judicial power conferred in 1848, by which the Poor Law Board was given concurrent jurisdiction with the Queen's Bench in all appeals against the decisions of auditors,² but with this difference: it might decide according to the merits of the case, but the latter could not. The court was obliged to follow the law. The experiment made four years previous had been so successful, and the remedy by applying for writ of *certiorari* had necessitated such delay and expense, that it was thought to be a wise solution to confer appellate jurisdiction upon a central administrative authority. Another purpose, not less important, was to secure the independence of the auditors. Much pressure had been brought to bear to induce them to consider the great hardship that would fall upon many persons who filled onerous offices without remuneration, and who would be compelled to sustain loss because of acts which they believed to be lawful as well as beneficial. Whereas paid officers might be expected to ascertain the law upon any subject, it was hardly just to expect unsalaried officials who frequently served for terms of one year, to break at once from all past traditions and follow only legal forms. So manifestly unjust was this, that the auditors were frequently persuaded to sanction illegal payments, or to overlook cases of neglect which caused loss to parish or union.³ The ultimate end of this course would be the assumption of the right to decide upon the merits of a case, which method all the past had shown to be incapable of beneficial results. The most natural solution was the one

¹ 13th Rep. of P. L. C., S. P., 1847, Vol. 28, p. 15. ² 11 & 12 V., c. 91, s. 4.

³ Rep. of P. L. B., S. P., 1850, Vol. 27, p. 19.

adopted, by which the Poor Law Board could confirm the decision of the auditor and remit the disallowance or surcharge, or confirm and not remit, or reverse—refuse to confirm but remit—or make what other disposal of the case it deemed just and equitable. Thereby it was thought that the auditors would be induced to adhere strictly to the law, and in case justice and equity required a different decision, the central authority might so order.

The right of appeal to the Queen's Bench remained intact, but although frequently used prior to the introduction of the privilege of appeal to the Poor Law Board,¹ it has since fallen into disuse² because of the slight expense, early decision and the frequency with which the decisions of the auditors were confirmed and the disallowance and surcharges remitted under the latter system.

The result of conferring such large powers as the Local Government Board is seen to possess was to place in its hands the power of determining what should be the future of the system. By very rarely acceding to the demands of the appellants, the system could not be said to have advanced very greatly. If a reversal of a decision could be easily secured, the independence of the auditors would be destroyed and the system would become little more than a method of preventing expenditures contrary to the will of the local officers. If the rule of sustaining the auditor except when justice demanded a remission should be followed, and if care should be taken not to sanction the same illegal expenditure by persons who might very reasonably be expected to have known they were acting illegally, then the auditors would tend to become independent, impartial enforcers of the law and at the same time justice would be secured by inexpensive, quick and easily accessible means.

¹ Rep. of P. L. C., S. P., 1846, Vol. 19, p. 14.

² 1st Rep. of Select Com., S. P., 1862, Vol. 10, Q. 2208; Rep. of L. G. B., S. P., 1893, Vol. 43, p. 91.

Practical Working of the System. Having followed the discussion thus far, the questions now to demand attention are concerning the position of the auditor. Has the system resulted in the establishment of an impartial enforcer of the law? Is he unsusceptible to local or personal influence? Is he efficient?

The plan of placing him almost wholly under the control of the central authority which also had the power of altering districts as it saw fit, resulted first in the decrease of the number of auditors and the increase of the size of their districts. The direct effect was an increase in remuneration, which was a strong incentive to more competent men to accept the position. Very justly they could now be required to devote their whole time to their duties, which meant a great increase in the thoroughness of the audit, for it is an occupation in which constant experience gives as large returns as any other. A knowledge of the law, of accounts and practice is primarily essential, but will avail comparatively little unless constant experience is added, by which one learns of the peculiarities, the many attempts to evade the law, and the actual local conditions attending. Another factor tending toward the securing of better men was the change in the method of appointment. Influence does not play such an important part as formerly, and real competency is more likely to receive its just reward. The result is that at present the district auditors are a highly capable, efficient and independent class of men. Local or personal influences have little effect, and although it is never possible to remove these wholly, they have been reduced to a minimum. The law is applied with a vigor that often arouses the animosity of local officers, and were it not for the privilege of appeal to the Local Government Board, some transformation would take place. Fifteen years ago it was not infrequent to find such charges as these in the disallowances

of the auditor: Destruction of five foxes, £3; destruction of moles contracted for at the rate of £8 per year for fourteen years; "Theatre, 4s."; two silver keys, £12;¹ traveling expenses, when no traveling had been done; local festivities, as perambulating parish boundaries; "Coppers scrambled for *en route*, £1 2s."; "Coppers given with a bun to each child attending the perambulation, 13s. 10d."² Similar items are found much less frequently to-day, and chiefly because the auditor has disallowed them, although such expenditures had been the custom for years. That they have not more rapidly and completely disappeared is due not to any fault of the auditor, but to a cause to be spoken of subsequently. The number of appeals from the allowances of the auditors furnishes another evidence of their efficiency. From 1876 to 1893 inclusive, only 282 appeals were taken, an average of sixteen per year. Of this number, the Local Government Board reversed the decisions in but 6 per cent. of the cases.

Having previously called attention to the power of the central authority to make of the system what it willed, the question naturally arises, How has it used this power? From the evidence at hand, the action of the Local Government Board seems to be influenced more by a desire to do no injury than by a desire to enforce the law unalterably.

It is to be expected that in the first years of the institution of this plan of appeal there would be numerous instances in which justice would demand that the decision of the auditor be upheld as far as the legal right was concerned, but remitted as to the infliction of the penalty. It is not very surprising to find then that 83.2 per cent. of the appeals decided by the Poor Law Board for the years 1852 and 1853 were confirmed and remitted; that only 4.8 per cent. were sustained pure and simple; that 8.6 per cent. were reversed;

¹ Rep. of P. L. B., S. P., 1882, Vol. 30, pp. 54-6.

² *Ibid.*, 1883, Vol. 28, p. 49.

the remaining 3.4 per cent. being decided in various other ways. Comparing these figures with the four years periods, 1880-83 and 1890-93, we find no appreciable change.¹

	Confirmed and Remitted.	Confirmed and Not Remitted.	Reversed.	Otherwise Decided.
	Per Cent.	Per Cent.	Per Cent.	Per Cent.
1852-53, 2 yrs.	83.2	4.8	8.6	3.4
1880-83, 4 yrs.	83.8	5.7	9.7	.7
1890-93, 4 yrs.	82.4	5.8	10.4	1.4
1895, 1 yr.	82.8	4.0	12.7	.4

These figures indicate that there has been no practical decrease in the proportion of cases where the legality of the auditor's course was upheld, but where the power of rendering what the Board thought to be an equitable jurisdiction was invoked. In close union with this statement, the fact is to be noted, that whereas in 1880-83 29.9 per cent. of the whole number of disallowances and surcharges were appealed, in 1890-93 40.1 per cent. were appealed.² Combining the results, we find that in the former period 25.2 per cent. of the disallowances and surcharges were remitted by the Local Government Board, in the latter 33.4 per cent.

Since 1881 there has been a great reduction in the absolute number of surcharges and disallowances,³ but the largest falling off has come since 1887, when the Local Authorities (Expenses) Act was passed, permitting appeal to be taken *before* the accounts were audited. If the Board

¹ For 1852-3, *vide* S. P. (225), 1854, Vol. 55, p. 8. For others, *vide* Rep. of L. G. B. for those years.

² In 1895 only 20.1 per cent. were appealed.

³ The highest point was reached in 1881, when the number was 7,884, being 4,052 in 1895. The number of appeals reached a maximum of 2,832 in 1885, being 829 in 1895.

approves the expenditure, it can not afterwards be disallowed by the district auditor.¹ This privilege has been very widely used,² for it gives the local authorities an opportunity of securing the opinion of the Board as to what is lawful, and relieves them of the trouble and expense of appealing from the decision of the auditor.. If we add the number of applications under this Act to the number of accounts disallowed by the auditors, the figures have not materially changed since 1885. That it is proper to do this to ascertain the true position of the Board relative to the district auditors is unquestioned, for not a report of the Board since 1888 fails to declare that the decrease in the number of disallowances and surcharges is almost wholly due to the Act of 1887. Nor is any material change made in the percentage of the appeals confirmed and remitted, for about 88 per cent of the appeals taken prior to audit are sanctioned, and undoubtedly there are some expenditures presented for approval that would not be disallowed by the auditors. The number is probably not large, however, for the auditors' attitude of strict enforcement is quite universally known. Considering all the facts, the conclusion is reached that the central authority has been so lenient in its decisions of appeals that a carelessness has arisen among local authorities regarding expenditures, for they know that if the auditor disallows the account, they can appeal to the Local Government Board, represent that they were unaware of the illegality and that they had expended the sum in good faith. The disallowance will be remitted with the admonition perhaps that a repetition of the offence will be dealt with differently.

The effect of such a system is such as to make it of little

¹ 50 & 51 V., c. 72.

² The number of applications for approval averaged 1,088 from 1891 to 1893, and had grown to 1,790 in 1895.

value to ascertain how previous cases have been dealt with, but rather to place a premium upon ignorance of the law. A practice may be continued until the auditor discovers its nature, and manifests his disapproval by a disallowance or surcharge. Then the penalty is likely to be suspended, and the same course pursued in other exactly similar instances.

There is only one way in which we may harmonize the figures given above, and the theory that this conclusion is false. It is upon the supposition that there is an extremely long list of items which have been considered as sanctioned by law, a dense ignorance of the requirements of the statutes, and a gradual increasing ability upon the part of the auditors to find these new illegal charges. The improbability of the existence of such conditions needs no proof, especially when one remembers that from three-fifths to two-thirds of all disallowances and surcharges, and appeals therefrom, are in the accounts of the parish authorities. There is plenty of positive evidence to prove the falsity of this supposition and the truth of the previous conclusion.¹

Such is the system as it actually exists to-day, but words of condemnation must not be used until we view a few other facts. The vast improvement in every department of administration where the system is introduced should be remembered. As late as 1867 there were places that did not come within the reach of the district auditors, because local acts preserved the ancient *regimé*. As a result, nearly the same conditions were found there as existed everywhere previous to 1834.² Before the accounts of the highway boards and surveyors were subject to examination and audit, there is every reason to believe that illegal payments were

¹ Upon this general subject, see Arminjon, *L'Administration Locale de L'Angleterre*, pp. 265, 266.

² *Vide* Index to the Rep. of Select Com., S. P., 1862, Vol. 10.

included.¹ A few towns that obtained special acts authorizing an audit by auditors appointed by the Local Government Board, add their testimony to the value of the system.²

In every question of government, the fact of the Englishman's inbred opposition to centralization must not be forgotten. It is by no means unreasonable to say that had the central authority held the local authorities to the very letter of the law, public opinion would have demanded the removal of this central control, and far inferior results would have been secured than in reality have been. To learn how narrow has been the escape of the principle of central administrative control, one needs only to trace the history of the Poor Law Board. Considering every factor of the problem, the conclusion is reached that the system has worked admirably, that an efficient audit has been secured, that justice is rendered even though the central authority has gone too far in its endeavors not to infringe upon local customs. The fault is one capable of being remedied, and the system recommends itself to students of administrative law as not only grounded upon correct theory but as proven to work satisfactorily by experience.

¹ Rep. of L. G. B., S. P., 1878, Vol. 37, p. 43.

² *Ibid.*, 1893, Vol. 43, p. 137.

CHAPTER VIII

SPECIAL LEGISLATION

TO the American student of local government, the subject of special legislation is both interesting and important. The exact position of the city in our political science, its relation to the state legislature, has not yet been thoroughly worked out.¹ We are just beginning to grasp the idea that the municipality is an agent of the state and also an organization for the satisfaction of local needs. Our past failure to comprehend the truth has led us to adopt a legislative system of control, and although instances may be found of a tendency to substitute central administrative for legislative control,² the regulation of local authorities, whether dealing with state or local needs, has been almost entirely through judicial action or legislative statutes. As to questions of legislative policy or administrative expediency, we have either left the local authorities to do as they pleased or undertaken to direct and control them by general or special

¹ A most notable beginning has been made by Professor Goodnow in the most excellent works: *Municipal Home Rule*, and *Municipal Problems*; and Dr. Wilcox in *Municipal Government in Michigan and Ohio*.

² Cf. J. R. Commons, *State Supervision for Cities*, Annals of Amer. Acad., Vol. V.; also W. C. Webster, *Recent Centralizing Tendencies in Educational Administration*. The first attempt to establish a municipal board similar to the English Local Government Board was made by a New York commission, of which Hon. Frederick W. Holls was chairman. The bill was never passed, but was introduced in the Assembly in February, 1896, as Assembly Bill, No. 601. The purposes of the bill are explained in an excellent article read by Mr. Holls before the Third National Conference for Good City Government, Baltimore, 1896, and published in the Proceedings. It is entitled *State Boards of Municipal Control*.

acts. Beginning with the granting of charters or the conferring of powers by special acts, we soon fell into the habit of regulating everything by special act. The motives were at first free from all partisan bias, but they soon degenerated, until the interests of locality and Commonwealth became subservient to party politics in their worst form. Then we tried the plan of forbidding special legislation and of regulating local affairs only through general acts, or rather, we inserted in our state constitutions provisions forbidding the passing of special acts. When the question came before the courts as to what constituted a special act, they were obliged, owing to the minute specifications of the general laws and the varying needs of localities, to give a very narrow definition. The classification of localities was permitted, and the practical result has been either to free them from all control—except the judicial—or subject them to the same minute legislative control as had existed previously. No doubt some good results have been attained, but they are not at all satisfactory and far from expectations.¹

The conclusion that is now coming to be pretty generally accepted is that different localities must have, to a certain extent, different powers and different responsibilities. Were there no other reasons, the existence of large cities and country villages would justify a difference in functions. The present system of central control is also disapproved. Hence, while seeking a proper solution of the problem, it is extremely important that the English system be studied for the purpose of ascertaining whether the evils of special legislation have been avoided. It has been shown that central administrative control has been a most potent factor in producing efficient administration, but to us Americans, its effect upon special legislation is very important.

In the brief resumé of central administrative control, as de-

¹ Cf. Goodnow, *Municipal Home Rule*, ch. v; Wilcox, *op. cit.*, ch. iv, v.

scribed in the preceding chapters, the many and important instances where central departments possess powers that in our system are exercised only by the legislature were probably observed. It is unnecessary to restate the many provisions; the most important will readily come to mind. It should not be forgotten that not only are those provisions included which authorize the departments to pass rules and regulations which local authorities must obey, but also those regarding provisional orders, the conferring of powers upon rural district councils, the borrowing of money and the various other functions of similar nature. The fundamental plan is this: Local authorities are given a certain sphere of local autonomy within which Parliament will not and the administrative departments can not interfere. Then there is another sphere, larger and of much more importance than the former, within which the central administrative authorities are practically supreme, and which briefly may be said to include those matters which are not of mere local interest and over which there must be some central control. The third sphere is that within which Parliament is the acting authority, neither delegating its power nor voluntarily limiting its activity. This logical system, which has produced excellent results whenever consistently followed, has not always been in operation. The steps by which it was developed have been many, and the unsuccessful experiments may help us to avoid similar mistakes.

The first period in the history of all functions that are now under the control of local authorities is that in which private initiative held sway. Poor relief, education, public health and safety were all matters of private concern. One by one they passed into the hands of local authorities, but before any general system of administration was created, there was a long period when powers relating to these and other subjects were conferred upon various bodies. In some in

stances, the associations formed were purely private corporations; in others, the purpose was primarily a public purpose. The characteristic feature of this period was the use of local (or special) acts.¹ General acts relating to these matters were wanting. This period was soon succeeded by one in which the necessity of general legislation became manifest, and although local acts still remained prominent, the relative importance of general acts constantly increased. Then came the system of central control which took from Parliament and from the local authorities certain powers and duties and conferred them upon central departments. General and special acts still continued to be passed, and thus through three avenues could the functions of local bodies be increased. All of these periods did not come at the same moment in all departments of local government, and some subjects once administered by the localities have passed entirely into the hands of the central government, but it is true that the same stages of development have taken place in all and in precisely the same order.

The method of dealing with local acts has also passed through various stages. At first the evidence for and against the passage of a bill was heard at the bar of the House, but the number of the bills increased so rapidly that committees had to be formed to consider the bill. All members who wished to attend constituted the committee, but this was so unsatisfactory that the membership was gradually decreased, until in 1855 the number was limited to five.²

The results of all these methods were unsatisfactory. The evils with which we are so conversant were present in

¹ I shall use the term "special" as applied to acts or legislation not in its legal meaning as defined by the courts, but as commonly understood; that is, as including legislation that applies to only one or a very few localities.

² Upon the general subject of special legislation consult De Franqueville, *Le Gouvernement et Le Parlement Britanniques*, iii, chapters 38, 39, 40; Clifford, *Private Bill Legislation*; also May, *Parliamentary Practice*, bk. iii.

all their magnitude. A somewhat more successful plan was begun in the fifth decade, when acts were prepared known as "clauses acts." It had been noticed that many of the local acts possessed quite similar provisions regarding certain subjects. These were collected and formed into a clauses act. Thus when any authority wished to incorporate these provisions in a local bill, it simply stated this fact in the bill without repeating the provisions. In 1845, three clauses acts were passed relating to joint stock companies, the taking of land, and the building of railways. Two years later eight more were enacted, relating to markets and fairs, improvement commissioners, harbors, docks and piers, town improvement, cemeteries, gasworks, waterworks, and police.

The effects of this plan were beneficial and removed some of the evils, which were constantly increasing. Many local bills incorporated these acts, thus producing more uniformity and precision. Many of the legal and technical mistakes which had crept into the earlier and inadequately considered private bills were avoided, owing to the care with which the clauses acts were prepared. The size of the bills was greatly decreased. A definite understanding of their purposes and effects was made possible. The cost of promoting or opposing was largely reduced, and litigation diminished.¹ Still much was left unaccomplished. The clauses acts did not cover the whole field of local government. They were inapplicable to many conditions, because too specific. If the promoter of the bill did not choose to adopt them, little force was brought to bear to induce him. Parliament did not amend them and thus keep pace with local needs and desires, but the great local differences made it almost

¹ Up to 1856, 300 acts had incorporated some of the clauses acts. De Franqueville, *op. cit.*, iii, p. 126. "Special Gas Acts, which in 1846 sometimes comprised over 200 clauses, were, after the legislation of 1847, contained within 40." Clifford, *p. cit.*, i, p. 221; also ii, p. 530.

impossible to amend them by a general act. Thus, like all its predecessors, the plan of adopting clauses acts failed to solve the problem completely.

What, we may pause to ask, were the faults of the systems of enacting local bills, which English statesmen were obliged to abandon for a system of central administrative control? I say system of *enacting* local bills, for the English in their opposition to the evils attending special legislation have never lost their mental equilibrium so far as to try to prevent the granting of special powers to a particular locality, *provided* the interests of the country are not menaced, and provided the locality really desires and needs the powers, and is capable of exercising them. They have always recognized that different local authorities need and must have different powers in order to serve their constituents most efficiently. American constitution makers can hardly say as much, and their futile attempts to limit the powers of our state legislatures without providing other means of meeting the inevitable prove the weakness of their position.

Probably the most disastrous evils are those arising from the improper consideration bills received either from the committees or from Parliament itself. To expect that Parliament could give them the examination and discussion they required is sheer folly. But the formation of committees was not much of an advance, for when they were composed of the opponents and promoters of a bill, the decision depended upon numerical strength rather than upon the inherent virtue of the bill. Impartial persons, the very persons needed, did not often attend. The decrease in the number of members constituting the committee and the selection of unbiased persons removed some of the evils, but others still remained. Such committees, although actuated by the best of motives, did not have the experience or knowledge required. The evidence presented came either from those op-

posed or those favoring the bill, and very frequently their motives were not free from taint. As a result, the act was not desired by the locality and often unsuited to the actual conditions. "The bulk of the population, in short, seldom knew anything about the local act until they were assessed to pay high rates for defective work and for legal expenses." "Until a very late period local acts conferring great powers on individuals, interfering with property, sanctioning taxation, and involving in almost every shape and shade the most important public interests, were passed without inquiry being made beyond the precincts of St. Stephen's."¹ Local inquiries were tried later, but the results were not satisfactory.²

Another objectionable feature was the continual enactment of provisions that were recognized to be objectionable when brought to light, but which through oversight and lack of investigation had received the approval of the committee. General laws were altered without any sufficient justification, and the bill was often contradictory and discordant within itself. The litigation arising was enormous, and in some instances the conditions became so bad that a general act was passed repealing the alterations of the general law made by local acts.³

The cost of getting bills through Parliament was enormous. From the very moment they were introduced up to the hour signed, fees of all sorts had to be paid. The expense of printing, although decreased in many instances by the incorporation of clauses acts, was no minor factor. The lawyers who managed the bill, who appeared in its behalf

¹ *Edinburgh Rev.*, 1850, Vol. 91, p. 224.

² Rep. from the Select Com. on Local Acts, S. P., 1850, Vol. 13.

³ Cf. Rep. from the Select Com. on Private Bills, S. P., 1846, Vol. 12, where the conditions are more fully described and remedies proposed. See also Hansard, *op. cit.*, Vol. 27, pp. 279 *et seq.*; Clifford, ii, p. 524; and preamble to 54 Geo. III, c. 170.

before the committees, who guarded it from attack in all its stages, who prepared the evidence, demanded large fees. The expenses of witnesses, of meetings, and of numerous other matters contributed a large quota.¹ The Parliamentary cost of a water bill for Liverpool was \$100,000,² and although this is rather an exceptional case, there are many others nearly as costly.

To understand the importance and extent of the evils just described, it is necessary to get some idea of the number of local acts, but in order to do this, one must know more exactly how the acts passed by Parliament are classified. Since 1868, there have been three main classes: public general, local and personal acts. The public general acts are those printed in the statutes, and include those referring to the country at large and special acts relating to the Metropolis. The local acts are those that apply to some small portion of the country or locality. A subdivision of this class called "public local acts," which will be fully dealt with in subsequent pages, embraces the acts confirming provisional orders and a few others that are given that name by statute. Personal acts are those dealing with the affairs of private individuals, such as estates, divorce and naturalization. Comparing the number of acts passed in these three classes, one finds that from 1814 to 1895 over 14,000 local acts were passed, or nearly twice as many as the number of public general acts passed in the same period.³ In the first half of the century over 400 improvement acts were passed,⁴ and nearly every large city was governed by so many different acts that it was difficult to tell what the law

¹ De Franqueville, *op. cit.*, iii, pp. 209-219; Clifford, ii, chap. 19; i, pp. 256-260.

² *Edinburgh Rev.*, 1850, Vol. 91, p. 225.

³ Cf. Clifford, i, pp. 266 *et seq.*, also pp. 491-2. The figures for earlier years cannot be depended upon as accurate.

⁴ *Ibid.*, ii, p. 291.

actually was.¹ Thus the evils described were not limited to a few bills or a few localities, but extended to every locality and to every authority. To remedy such a condition of affairs, certain powers have been conferred upon various central administrative authorities. Even as early as 1846, the Board of Trade exercised a general control over bills that sought to incorporate trading companies or related to harbors, docks, piers, canals, navigation, gas and water-works. But as private not public corporations were alone involved, this experiment is somewhat outside our sphere. It is to be noted, however, that the plan of having an administrative authority examine the bills has since been widely extended, and no doubt the beneficial results of this early experiment was one of the chief causes of the extension.²

It has been frequently stated in the preceding chapters that whenever the power to issue provisional orders has been conferred, Parliament has nearly always considered the decision of the department as final and approved the order without modification. It is now necessary that the position of Parliament be considered somewhat more carefully.

The number of provisional orders granted by eight different departments for all of Great Britain prior to August, 1882, was 3,554, of which 3,142, or 88.7 per cent., had been confirmed without opposition.³ Of the remainder the Return does not give sufficient data to tell how many were confirmed with or without amendment, but from other information at hand it seems probable that not over 5 per cent. were confirmed with amendment or not confirmed at all. If the orders issued by the Local Government Board for the four

¹ Cf. Hansard, *op. cit.*, Vol. 98, p. 736.

² Cf. Clifford, ii, p. 899. Also a Rep. from the Select Com. on Private Bills, S. P., 1847, Vol. 12, p. 17.

³ S. P. (99) 1883, Vol. 55. The acts by which the powers were given, and how they are to be exercised, are also given in this Return.

years, 1877-1880, be consulted, it is found that of the average number of 177 orders granted annually, 88.1 per cent. were confirmed without opposition, 2.4 per cent. were opposed but confirmed without amendment, 6.8 per cent. were confirmed with amendment, and only 2.7 per cent. were not confirmed, one-half of these being withdrawn or dropped before coming to a vote.¹ By 1895, the number confirmed without opposition had risen to over 90 per cent.² If the orders are examined more closely, it will be found that the amendments that are made relate to minor matters, and are not opposed by the Board. In the few cases where orders were withdrawn or suspended, it was usually done to let the others against which there was no opposition be confirmed, or because there was not time for consideration by Parliament.³ Most of them were probably confirmed the following year. What has been said regarding the Local Government Board applies with equal force to other departments.⁴ The conclusion is reached, therefore, that unless we can find some potential influence exerted by Parliament over the central authorities, they are actually almost wholly free from any control.

Provisional orders must always be confirmed by Parliament before taking effect, but in considering its attitude, one must never lose sight of the confidence placed in the central authorities by Parliament. The former have always been composed of men of ability. Party politics have not injured the efficiency of the subordinates, and all orders have been thoroughly considered, legally drawn, and wisely framed. The interest of the country as well as that of the locality has been kept constantly in view, and as far as human knowledge is able to select the wisest course, such has been fol-

¹ S. P. (219) 1881, Vol. 14. ² 25th Rep. of L. G. B., 1895-6, pp. 591-597, App.

³ *Ibid.*, pp. 28-32, 96, 113-117.

⁴ Rep. by the Board of Trade, S. P., 1894, Vol. 75; Clifford, ii, pp. 676-709.

lowed. Thus, although the possibility of refusal by Parliament to confirm an order may exercise some slight influence, it is almost reduced to nothing. The suggestions of the departments are followed almost invariably, and I doubt if they would pursue different courses were all restraint to be removed. Should other principles than those followed at present get control of the departments, the reserve power might be so used as to exert a most potent influence, but it exerts little control at present.

The advantages of the system of granting powers, whether by general order, by giving consent to perform a specific act, for which a request has been made, or by issuing a provisional order, are numerous and important. The system makes it possible to avoid two extremes, which are almost equally disastrous—general legislation with large grants of power, leaving to the locality the duty and responsibility of determining what powers shall be exercised, and special legislation with limited grants of power, where the legislative body decides questions of administrative policy and determines local needs, for which it is unfit and was not intended. This system makes it possible to leave to the legislative body its proper duty of passing acts of general application, acts that are of interest to the people as a whole, that any local authority may adopt, and that involve no other question than that of local desire, and to transfer to a non-political body the determination of all questions of fact and expediency.

The practical results have been commensurate with the soundness of the theory. Questions relating to the granting of powers are now considered by an impartial, unprejudiced authority. Every detail is examined with care, and the effect of the proposed bill upon local conditions and general laws is worked out with precision. The locality to be affected is visited in all instances of any importance, an opportunity of being heard is accorded to all who desire it,

and the utmost publicity is given to every proceeding. Even if personal interest is an inadequate guardian of local welfare, the central authority is almost sure to detect injurious provisions. Since the bill or order is drawn up by agents of this body, there is no chance for ambiguous phrases to be inserted or contradictory clauses to produce disputes and litigation. The cost of granting powers to satisfy local needs is also much reduced. The formalities to be observed in Parliament have been greatly simplified, and the expense decreased accordingly. The inquiry is now held in the locality instead of at London, and this also contributes to the same end. The large fees of lawyers and advocates have been rendered unnecessary, and the expenses incurred by central authorities do not begin to compare with the costs of local acts in former days. After the provisional order is introduced, if this is the method adopted, enactment follows immediately, unless there is opposition. The actual work of investigation has been done previously, and the bill is hurried through the required forms. If there is opposition, it is referred to a select committee, where the points at issue are alone considered. The questions are, therefore, so few that they can be fully discussed without great delay. Haste is never made the chief object, and thorough consideration is always secured when necessary.

The disadvantages, or, rather, the dangers of the system, are few. There is a tendency to become mechanical, and to cling to set opinions, whereas it is impossible to apply to all localities the same principles and ideas. The inquiries may be conducted to substantiate the doctrines of the central department rather than to get at the truth. There is a possibility of the system becoming centralized and bureaucratic. I say *possibility*, because the actual operation of the system seems to declare distinctly that it is nothing more than a possible tendency, a condition to be guarded

against. Thus far the departments have been very successful in preventing such charges being truthfully asserted, although they have not been entirely free from the accusation.

The question naturally arises as to what effect the system has had upon the number of local acts passed by Parliament. Consulting the statistics it is found:

Average number of	1821-30	1841-50	1861-70	1871-80	1881-90	1891-95
Public general acts .	99	113	125	87	72	65
Local acts.....	138	172	252	223	222	217
Public local acts ¹ ...	?	?	10	32	50	73

Since there are very few public acts that are not provisional orders—three or four each year, perhaps—the lower figures may be considered for all practical purposes as being the number of acts confirming provisional orders.² The table shows that since 1861-70, there has been a considerable decrease in the number of local acts, and if we subtract the number of confirmation acts, this decrease becomes much more noticeable. This is a most encouraging sign, for in all justice it may be assumed that if the methods of conferring powers had not been changed since the beginning of this century, there would have been a large increase in the number of local acts. The rapid growth and gigantic size of cities, the introduction of tramways, the construction of railways, canals, docks, piers, highways, and the almost innumerable undertakings for the improvement of sanitary con-

¹ The reader must be warned against considering these figures as contradicting those given in the preceding pages. A number of provisional orders are usually combined in one confirmation act. The number of orders issued by the L. G. B. in 1895 was 110, but the number of acts confirming these was 24.

² Cf. Clifford, i, pp. 491-2.

ditions would have raised the number far above its present height. See, for example, the activity of the Local Government Board during 1895, the 1900 orders issued confirming loans and expenditures by local authorities, the 90 rural district councils upon which urban powers were conferred, the 100 provisional orders confirmed, and the hundreds of other orders of a similar nature, and remember that the Local Government Board is only one, although the most important one,¹ of the eight or nine authorities having kindred powers, and it seems impossible to deny the truth of the statement. This large number of local acts could have been avoided by the enactment of general laws, transferring large discretionary powers upon local authorities, but the result would have been to change the nature of the evils and not their disastrous effects.

The figures given in the above table include all local bills whether referring to local authorities or private persons, whether dealing with public functions or private affairs, and since this study has reference only to local authorities and public functions, the table should be further dissected. However, this is at present impossible, for no classification has yet been made which divides the acts into classes along these lines. In the matter of tramways, for example, one is unable, without reading the acts, to tell from any classification yet made how many acts relate to local authorities and how many to private corporations. But it is definitely known that the number of acts promoted by sanitary authorities has fallen off over two-thirds since 1880, there being only eight in 1895;² and all other evidence points to a decrease, more or less, in the number promoted by other authorities. It is positively certain that there has been no increase either in absolute numbers or percentages.

¹ The number of acts confirming orders issued by the L. G. B. is about one-third of the whole number of confirmation acts.

² 25th Rep. of L. G. B., 1895-6, p. 601, App.

The number of acts confirming provisional orders must not be taken as the correct expression of the activity of the central authorities in preventing private bills being passed, even though it is remembered that the number of cases actually dealt with is about five per act, which proportion is increasing. The instances in which powers are conferred by orders (without confirmation), loans sanctioned, boundaries defined and financial relations adjusted must all be kept in mind. If the special acts passed by our state legislatures dealing with these subjects were subtracted from the whole body of special acts only one important class would be left, which would embrace those dealing with the organization of our cities.¹ This class of acts is not found in England, because all the important acts dealing with local affairs leave the subject to be worked out either by the local authorities themselves or under the control of a central department, or by the central departments themselves. It is not a subject which Parliament determines except in a very general way. Thus, if we should adopt the English system, special acts would be decreased to a minimum.

Besides reducing the number of private bills and removing the evils which had attended them by substituting a responsible administrative for an irresponsible legislative body, other beneficial results have been attained, which apply to the private bills that are still enacted. One method, briefly noted in a preceding chapter, was that of requiring all private bills relating to subjects within the jurisdiction of the Local Government Board to be referred to it for consideration and report. This plan, which was introduced in 1872-3, has secured most positive good in preventing unreasonable and improper provisions regarding financial matters from being enacted, but these were not the only results. Whenever defects of any nature were discovered, they were called to the atten-

¹ Cf. Wilcox, *op. cit.*, chapters iv, v, particularly pp. 78 *et seq.*

tion of the select committee that had the bill in charge. At first a large number of undesirable provisions were found, but owing to the attitude of the Board and of the select committee, these have largely disappeared. The Board has held that no powers should be granted in excess of general laws, unless strong reasons existed and the desired results could not be secured by by-laws, its purpose being to prevent the nullification of central control and the introduction of local irresponsibility. The form as well as the substance of the bill is also examined and the results are most satisfactory. The report of the Board is usually accepted and followed by the select committee, whose decisions are invariably adopted by Parliament.¹ Thus the beneficial results obtained, and they are not few, are due directly or indirectly to the attitude of the Board. Since 1873, the method has been extended, until now about sixty bills are examined annually, dealing with private corporations as well as local authorities. The same system has been applied to other departments with similar results.² No doubt it has some effect in keeping the number of bills from increasing,³ for unless much more favorable terms can be secured by local bills than under the general laws, the trouble and expense of securing the former are not going to be undertaken.

According to an act passed in 1872, borough councils must secure the approval of the Local Government Board or the Secretary of State in order to defray the expenses of promoting or opposing local bills in Parliament from the borough rate, and if a provisional order will obtain the proper result such expenses cannot be defrayed from rates under any condition.⁴ In 1888 the Act was extended to apply to county councils, with slight alterations.⁵ Thus in

¹ Rep. of L. G. B., S. P., 1886, Vol. 31, pp. 87-8.

² Clifford, ii, p. 899.

³ Rep. of L. G. B., S. P., 1887, Vol. 36, p. 107.

⁴ 35 & 36 V., c. 91.

⁵ 51 & 52 V., c. 41, s. 15.

another way may the central control the local authorities. These acts also show the opposition to local bills. In 1895, only 17 boroughs were given the privilege of promoting, while 44 boroughs and counties were allowed to oppose bills.¹

The hope has been sometimes expressed that some system might be prepared by which special legislation—local acts—might be done away with entirely, except as such bills originate in some department of the central government,² and if this condition is an ideal one, it would seem to indicate that England is yet quite far from the goal. It is true that much improvement might still be made in the methods of dealing with the affairs of private persons or corporations, for of the 150 purely local bills, at least three-fourths belong to this class. This leaves the number of local bills referring to local authorities at a very low figure. Whether the number should be still further reduced depends partially upon our opinion as to whether all special legislation is an evil. Starting with the premise, now usually accepted as true, that there must be some sort of central control over local authorities, either legislative or administrative control must be adopted, or a combination of the two. A purely legislative control has been proven unsuccessful, and thus the only alternatives are administrative control pure and simple, or legislative and administrative combined. If one considers the cases likely to arise, it will be found that there will always be instances of great importance, instances involving more than simple questions of local desire and expediency, instances that affect vast interests either favorably or prejudicially, that are of an extraordinary nature, and that should, therefore, be considered by the legislature rather than the administration. The Manchester Ship Canal Act, passed

¹ 25th Rep. of L. G. B., 1895-6, pp. 33, 124.

² Various plans have been proposed to secure this result. See Clifford, ii, pp. 903 *et seq.*

within the last few years, is an excellent example. Such being the facts, it can hardly be denied that all special legislation should not be transferred to administrative authorities. Unless it is proposed to change the principles at the foundation of the government, it is hardly possible to regulate all matters by general acts and administrative control. The legislative body may ask the administrative authorities to secure information, hold inquiries, and thoroughly investigate the subject, but when matters of extraordinary interest and influence, and of general policy are to be decided, the legislative body must give its own decisions.

Testing the English situation in the light of these facts, it is found that there is still room for improvement. Parliament leans more towards an extended legislative control than towards an improper delegation of power. Especially is this true of local bills sanctioning loans, but improvement is being made even here. They are becoming fewer in number and contain fewer improper provisions as to the time and method of repayment than formerly. I have no doubt but that the coming years will see a further reduction in the number of local bills, although, as has been said, they will never wholly disappear. Compared with our system and its results, the English system is far, far in advance, and the student who desires a practical solution of the problems involved in special legislation will do well to make a thorough study of central administrative control, and consider if possibly we may not learn valuable lessons therefrom.¹

¹ The great difference between English and American conditions is strikingly illustrated by comparing the number of special acts passed in *one* American Commonwealth—New York—with that of the local acts passed by the English Parliament for England, Wales, Ireland and Scotland. The average annual number of special acts referring to cities passed by the New York Legislature from 1881 to 1890 inclusive was 128. The average annual number of local and personal acts minus the provisional orders passed by Parliament for the same period, was only 172, and a large percentage of these referred to private corporations. Cf. Rep. of N. Y. Senate Com., 1891, Vol. 5, pp. 458, 506-511.

CHAPTER IX

THE THEORY OF CENTRAL ADMINISTRATIVE CONTROL

IN the preceding chapters it has been shown that in every important field of local government the idea of local self-government pure and simple has been abandoned; that central administrative authorities have been created, upon which powers formerly possessed by the local authorities and Parliament have been conferred; and that increased efficiency has everywhere attended this transformation. The endeavor will now be made to discover the theory upon which the English system of central administrative control is founded, to ascertain whether it is a permanent institution or only a temporary phenomenon, and to determine how far decentralization is consistent with efficiency.

Properly to consider the system, it is necessary to group the provisions of the law establishing it into six classes. These are those providing for (1) the grant of government aid upon condition that certain requirements have been fulfilled; (2) the issue of rules, orders and regulations dealing with affairs locally administered; (3) the approval of acts of local authorities in order to render them valid; (4) the decision of appeals taken from the decisions of local authorities or of disputes in which one party at least is a local authority; (5) the administration of local affairs when local authorities improperly perform or neglect to perform their duties, and the imposition of penalties for mal-administration; (6) the holding of inquiries, the preparation of reports and the diffusion of knowledge. In

practice no one of these classes is entirely distinct from the others, but being quite different in theory it is necessary to consider each separately. Their object is administrative efficiency, but all are not equally successful in securing it, and the extent to which the present system may be decentralized varies greatly with different classes.

The first class of provisions, "conditional grants," may be supported upon either one of two grounds, and not infrequently both have been put forward at the same time. One may accept as a fundamental principle the proposition that aid should be given local authorities, that it is the duty of the central government to help them bear the burdens of administration; or one may start from the proposition that central control is desirable apart from government aid. Beginning with either one of these two entirely different ideas, the same conclusion is reached. Admitting the necessity of state aid, the question at once arises, how is the state to be assured that the money is honestly and wisely expended? That the state has a right to impose conditions according to which aid shall be given, no one will deny, for the principle that he who contributes to the support of the government should have a voice in its affairs is beyond dispute, and had been settled prior to the fourth decade of this century. The maxim, "Taxation without representation is tyranny," was some decades old, but was held to apply to the state, as well as to the individual. Hence, when it was decided that local authorities needed state aid, it was also admitted as a logical consequence that the state should have power to control the methods and purposes of its expenditure. Those who attacked the system attacked the nature of the conditions rather than the theoretical right to impose them. At the present moment no one would attempt to justify upon any grounds a plan providing for state aid without state control. Beneficial results *might* follow, but neither theory nor practice would justify the experiment.

Starting with the assumption that central control is advisable, it is necessary only to add another premise, *viz.*, that the opposition to central control is too strong to permit direct control, to conclude that conditional grants are desirable. Especially is this true if there is no important objection to granting state aid, provided its wise and honest expenditure is assured. When presenting the reasons for adopting a system of conditional grants, the order of the premises would need to be reversed, for those opposed to central control would perceive the true purpose of the plan, and thus oppose it. But the real end might be, nevertheless, central control rather than state aid.

The union of state aid and state control is advisable only as long as public opinion will not permit central control upon other grounds, for as a method of securing greater efficiency, it is radically defective. Those localities in which efficient administration is most needed are the very ones least affected. There must be a certain minimum amount of earnest endeavor, and where indifference and opposition most abound, least is accomplished, although there is the greatest need. It is also very difficult to frame a system which will recognize the proper standard for the distribution of the subvention. And it is still more difficult to determine what is the proper standard. The needs of the locality may not and usually do not vary directly with administrative efficiency, yet it hardly seems just to disregard the former; and it is found to be extremely difficult properly to combine the two. A system of conditional grants can hardly be considered as worthy of a permanent existence. It is only a makeshift. However, a moderately successful system may be invented. Much depends upon the nature of the conditions imposed and the sources from which the funds are derived that are distributed among the localities.

Whether the present system could be greatly decentralized

without injuring its efficiency is very doubtful. The local authority best fitted to supervise conditional grants is the county council, but to make the county the area for the collection of revenues and the county council the disbursing authority would remove scarcely any of the present defects, but would add others. The differences between counties in needs and wealth are too great to establish a more equitable distribution of aid than the present. To permit the local authorities to determine the conditions according to which aid should be given or to decide whether those imposed had been complied with, would do violence to the theory upon which the system is founded and would be entirely disastrous in practice. No one would think of proposing such decentralization. The only changes which appear wise are those permitting more freedom to the local authorities in matters of detail as they prove their ability properly to exercise discretionary power.

Passing to the consideration of the second class, it is evident that there is a vital change in the theory. In the preceding method of control, a way was open to those opposed to central supervision to escape it entirely by refusing to accept government aid. But in the second class, no such opportunity of evasion exists. Parliament has defined the competence of the central authorities, and there is no escape from the control provided. The powers considered in this class include the issue of orders governing the methods of administration, the appointment of local officers, their salaries, tenure and duties, and the issue of provisional orders, which, as has been seen, apply to so many other matters. The justification of the exercise of these powers by a central authority rests upon two principles, *viz.*: Whatever is of general interest should be administered or at least supervised by the general government or its agents; and when local authorities prove their incapa-

bility to administer efficiently a matter entrusted to them, it should be given to more capable authorities. Within the past century, there has been a most marked change in what is considered of general interest, *i. e.*, of interest to the state. In earlier years it was positively denied that England as a political unit had any interest in the methods of administering poor relief beyond the enactment of very general laws. Not until the eighth decade was it admitted beyond question that the state of the public health was of national, not local importance. The history of the factory laws also shows the great reluctance to acknowledge that the state had an interest in what had been considered of purely local or private interest.

Not only has there been a far-reaching change in the commonly accepted notion of the proper sphere of the state, but that body of affairs that are in reality of interest to the state has largely developed. Until populous communities sprang up, the state did not have much if any interest in the solution of sanitary problems. Private initiative was fully able to cope with them. Until the large factory appeared, laws regulating the hours of labor, the sanitation of buildings, the labor of women and children, were unnecessary. These facts partially account for the expansion of the conception of the sphere of the state, but not entirely. There has been a genuine change in the conception of the purposes and ends of the state, which would have produced a change in governmental activity, no matter whether the true sphere of the state had increased or remained unchanged.

These transformations would not necessarily have led to central control, although it could not have been justified had they not occurred, and although they might have suggested its adoption. It was necessary that one other condition exist, *viz.*, the inefficiency of local self-government, in order to justify central supervision, for local self-government is

much preferable, *ceteris paribus*. That the control should be administrative rather than legislative or judicial, is theoretically correct, and experience has proved its wisdom. The latter methods were tried and shown to be inefficient. Such a result was to be expected from the fact that the purpose of legislative control is to establish general limits of activity; that of judicial control to protect private rights, while the administration is the only part of the government whose purpose is administrative efficiency. If we test each provision of the second class from this point of view, that is, whether productive of efficiency or inefficiency, little is found to condemn. If one compares the beneficial results with the defects and shortcomings, the evidence is greatly in favor of the former.

To what extent decentralization is possible and advisable is not so easily answered. Admitting that the object of all administrative systems should be to leave to private enterprise and local activity all matters that will be efficiently administered by so doing, it is evident that there can be no hard and fast lines as to the proper spheres of the local and central governments. They will vary from age to age and from subject to subject. The political capacity of the men who are selected as local officers varies greatly, and consequently the subjects that should be entrusted to them can not remain unchanged under all circumstances. The nature of the department of poor relief makes it absolutely necessary that the principles according to which relief is given should be the same throughout the entire country. It is not so important that every borough, no matter what its size, should own and operate a system of waterworks. Hence some discretion may be allowed the boroughs; whereas in the former case, decentralization could not be viewed with favor.

Considering the provisions of the second class in the light

of these principles, it becomes evident that no general rule will apply to all. The issuing of orders regulating the granting of poor relief could certainly not be entrusted to local authorities, although it might be preferable to allow a little more freedom as to details. Local boundaries ought not to be fixed by the authorities governing the areas whose limits are to be determined. Particularly in the case of local areas for election purposes, should there be a superior authority to decide where the boundaries should be placed. Over the smaller areas which are wholly situated within a single county the county council might be given authority, but the impartiality and the ability of the superior authority should be beyond question. As to the conferring of important powers, whether by provisional order or by simple order, it is extremely doubtful whether any local authority should be given the power to authorize another local body to assume new powers. England is not so large as to make central control inapplicable and annoying, and the transfer of these powers to certain local authorities would not give the other local authorities any more self-government, but would tend to complicate administration and render it impracticable for Parliament to place such trust and confidence in the local authorities as is now placed in the central departments. If, for example, the county councils were given these powers, Parliament would have to examine carefully all provisional orders or affix its approval as a mere matter of form. Either course would lead to the very conditions to remedy which the present system was introduced. In like manner, one might consider every provision within the second class, but enough has been said to show the principles to be followed and the errors to be avoided.

The third class, which consists of those provisions requiring that the approval of a central authority be secured, is justified upon much the same grounds as the second class.

The argument is much the same, except that the plan of requiring approval is applied to those cases where the necessity of action is not so urgent, but where the chief end sought is to assure wise, lawful and efficient action if the authority acts at all. It is a plan to provide restraint rather than to incite to action, and is inapplicable where local authorities are averse to acting. Thus it is negative rather than positive in its effects. In practice, it has been quite effective, especially as to financial matters, but whenever the desire to act upon the part of the locality has been slight, the control exerted has been slight. Decentralization seems inadvisable in most instances. By-laws ought to be approved by a central authority in order to secure uniformity and the application of successful methods of enforcement, and to prevent the enactment of contradictory and defective provisions. To decentralize the control exercised over local financial affairs would be the highest folly. The defects of local self-government pure and simple are too manifest and have been seen too often to warrant local independence. In fact, it hardly seems desirable to modify the present system in any but the most unimportant instances, for when supervision is needed a central authority is the only authority suited to exercise it, and where none is needed, the submission of proposals for approval is not an objectionable formality. It might seem useless in the latter case, but the system is one which adapts itself to varying needs, and in the absence of important objections, the benefit of a control which may be exercised if needed, is a strong argument for its existence.

The fourth class represents the central authorities in a different light, and clearly illustrates the statement that England, and France and Germany, although starting from diametrically opposite points of view, have gradually approached the same ultimate position. The quasi-judicial

powers of the central departments in England resemble somewhat the jurisdiction of the administrative courts upon the Continent. Two subdivisions of these powers may be distinguished; one embracing those provisions whose purpose is to give the central authorities power to decide questions of legal interpretation, the other, including those requiring the exercise of discretionary power. In neither is the power given to decide whether a statute or ordinance is legal or illegal. This is a subject within the jurisdiction of the courts alone, and although a central department may to a certain extent permit non-enforcement, as in the case of central audit, no administrative authority has the power to declare a statute illegal. The reasons the central departments have been given power to decide any questions of legal interpretation, as in the case of disputes over costs of poor relief, settlement, removal, chargeability, and local boundaries, are the need of a short, inexpensive and easily accessible process of securing a decision, and the impracticability of leaving such questions to be decided by local authorities. Especially in the administration of poor relief, has local self-government been shown to work badly, and the beneficial results obtained from the exercise of quasi-judicial powers by administrative authorities seem to justify the theoretical inconsistency. As to any possible decentralization, it seems hardly wise to substitute local for central authorities, for the questions must be submitted to a superior authority, and such being the case, it seems better to have an authority that is certainly free from all prejudice than to try to secure the slight benefits that would accrue from decentralization. Whether the powers might not be transferred to the judiciary is open to discussion. If this were done, it would be necessary to modify the procedure in certain instances or establish special courts, and the advantages that would follow are theoretical rather than practical.

The justification of central control in the second subdivision of this class seems to be found chiefly in experience. Where disputes arise over questions of administrative expediency, in which two or more local authorities are concerned, it is admitted by all that an administrative authority is the proper authority to render a decision, and experience as well as theory selects a central rather than a local authority. In the case of auditing accounts, it has been pretty definitely settled that discretionary power should be lodged somewhere, and that a central department is the only competent authority. In other instances, as for example the apportionment of private improvement expenses, it might be possible to provide for appeal to a higher local authority rather than a central authority, but I cannot see that there is much to be gained by this change.

Thus far nothing has been said concerning the actual administration of local affairs, or the appointment or removal of local officers, by central authorities, but as the preceding chapters disclosed a most powerful control in this direction, its theoretical justification is of great importance. The fundamental principle is that whatever is of interest to the country at large should be made so subject to central control as to permit the central government—the guardian of the nation's interests—to step in and enforce its will in case the local authorities disregard it. The broad conception of what is of public interest has been shown in the preceding chapters, but several practical questions at once arise. Who is to determine when the central government should interfere? What authority should remedy the default? Who is to decide what fields of administration are of general interest? To the last the answer is unquestionably that the legislative body must determine the bounds and limits of the general interest. It is also definitely settled that when the question of enforcement or non-enforcement is raised, a local author-

ity cannot be allowed to decide, for public interest would thereby be subordinated to local interest. Such a course might be possible if the decision of a local body could be shown to accord with public interest, but such is not apt to be the case. It may be in some instances, but there is certainly no assurance that it will be. An impartial judge is needed. The courts are not the proper tribunals, except so far as questions of law are involved, but these are comparatively unimportant. The duty of the courts is to protect private rights, and whether a law is being enforced is often not a question affecting private rights at all, but a question of administration, and as such should be decided by administrative authorities. Whether an intermediate stage between extreme decentralization and central control, a system where a higher local authority should decide whether a subordinate local authority was in default, might not be preferable is extremely doubtful. The possession of this power by a locality would not increase the interest in local government, unless it were that kind of interest which would tend to prevent the enforcement of law, and the purpose of central control is to avoid this very evil. Thus it seems conclusive that central administrative authorities should possess the power of determining whether a local authority is in default. Experience has shown that the danger of uncalled-for interference has been avoided, as well as that of inactivity where interference was needed. The local authorities have been given ample opportunity to act before actual administration has been taken from their hands. Likewise, the central administrative authorities or their agents should remedy the default if the local authorities refuse. This conclusion is derived from the principle that the state is interested in the execution of the law, for the central government is the only agent of the whole country, and the administrative departments are the only ones whose object is efficient administration. They

are not justified, however, in continuing to execute the law any longer than is positively necessary to remedy the default. Otherwise, the principles of local self-government would be subverted. But it is not considered as a violation of local self-government for the central government to interfere when a locality refuses properly to administer the laws regarding poor relief, education, public health, and allied subjects.

The sixth class of powers possessed by the central authorities can hardly be considered as establishing central control except very indirectly. The holding of inquiries, the conducting of investigations, the publication of reports and the dissemination of information regarding methods of administration exert only an indirect influence, but their great utility cannot be questioned. The system needs no justification. It is universally admitted that such powers belong and can be exercised best by the central government. The expense of a permanent commission or department has often been magnified and sometimes urged as a reason for abolishing the powers, but there is little doubt that the money is well invested. The beneficial results are much larger than at first appear. The question of decentralization of these powers is of no importance. Such a movement is never advocated; the objections to it are too manifest.

The statement is often made that the older local subdivisions are governed by authorities over which the central administrative control is not so great, that the parish, the county and the borough possess more local autonomy than the union, the county district—sanitary district—or the school district. And this supposed fact is not infrequently used to explain the excellent condition of municipal government in England. It is important to examine the former statement and see how much truth it contains and how much error it

conveys. Owing to the chaotic condition of local government, it is almost impossible to discuss the subject from the standpoint of local *areas*, but resort must be had to that of local *authorities*. To say that the parish is less subject to central control than the union or the school district is misleading. What is meant by "the parish?" Is it the local area usually called by that name, or is it supposed to refer only to the activities of the newly created parish council or parish meeting? If the former the statement is inaccurate and meaningless, for the parish is a part or the whole of a union, a school district and a county district as far as area is concerned, and as such is subject to the wide central control outlined in the preceding chapters. In other words, the administration of poor relief, elementary education, public health, and many other matters of local government, do not concern the parish as a parish and are subject to central control. But if "the parish" refers to the parish council and the parish meeting, the statement is to a certain extent true. It is to be remembered, however, that as compared with the other local authorities, the distinctively parish authorities have a very limited sphere of activity. The matters dealt with are: lighting, baths and wash-houses, burial grounds, recreation grounds, and public libraries, all of which are regulated by adoptive acts; appeals against valuation lists, county rates, *et cetera*; the provision of books, offices and fire engines; the management of property; allotments and, in certain instances, drainage and water supply.¹ But even in these matters, the district council has often preëmpted the field, thus excluding the parish authorities. The latter, even in the case of subjects definitely within their jurisdiction, are not, however, free from all central control. The Local Government Board possesses quite important powers of supervision, especially in the case of

¹ 56 & 57 V., c. 73.

by-laws, audit of accounts, and all subjects involving the borrowing of money.

The county was quite free from central control until 1888, but its competence was indeed very limited as far as local administration was concerned. When the county council was established in 1888, it was, however, subjected to central control, and although not to the same extent as the board of guardians, the district council or the school board, it is by no means independent. The reasons for the adoption of such a course are twofold. The county council does not deal with many matters that are of interest to the whole county, but principally with those of only local importance. Then, too, the county council was established after the training of many years had increased the political capacity of the people, making central control less necessary in minor matters. The same explanation applies with equal force to the Act of 1894 relative to parish authorities.

The position of the borough is similar yet different, and owing to the erroneous ideas that seem to be so prevalent in this country regarding the true position of the English borough, it is necessary carefully to ascertain its exact status. The American student should notice first of all that at least two important functions belong to authorities entirely separate from the borough, *viz.*, elementary education¹ and poor relief. The borough constabulary in boroughs of less than 10,000 inhabitants is under the management of the county, and in all others is subject to central administrative control. These facts make the competence of borough councils much smaller than what we have been wont to consider the proper sphere of municipal authorities. If we examine

¹ Where attendance committees are the only local school authorities, an exception must be made, for the borough council appoints the committee. But as these exist only where voluntary contributions are sufficient, their province is limited, and the exception is not important.

the Municipal Corporations Acts, the comparatively minor importance of the functions of the borough council is again shown. The subjects we are so accustomed to find dealt with in city charters, *viz.*, street railways, waterworks, sewerage, and sewage disposal works, street improvement, paving, cleaning, electric lighting, gasworks, parks, and the many others embraced under "public health," are conspicuous by their absence. Perhaps the comparative unimportance of the borough-council is best reflected by the amount of indebtedness of borough councils, which in 1894 was only 7.4 per cent. of the entire local indebtedness.¹ The local rates of borough councils were 8.5 d. and 6.5 d. in the £ for county and other boroughs respectively, whereas the entire local rate was 3 s. 8.3 d.² But even in the sphere thus seen to be so narrowly limited, the municipal borough is not free from central control, although it is true that it is not subject to central control to the same degree as other local authorities. The chapters upon Local Finance and Special Legislation demonstrated that it is far from being entirely independent.

But the important local unit is not the borough; it is the urban county district. It is the borough council acting as sanitary authority, the urban district council, rather than the borough council as municipal authority, that is the prominent local authority. To be convinced, one needs only to compare their financial transactions. As sanitary authorities the councils have an indebtedness eight times as large as they have as municipal authorities, or an amount equal to sixty per cent. of the total local indebtedness. Comparing

¹ *Supra* p. 208. The Metropolis is not considered in this as well as the subsequent comparisons. It is also to be remembered that I am now speaking only of borough councils as such, as municipal authorities, not as other authorities, district councils for instance.

² *Supra* p. 210.

local rates, it is found that the former levy a rate five times as large as the latter, or a rate nearly three-fourths as large as the total local rate.¹ But why, it may be asked, is it necessary to call so much attention to this fact? The urban district council *is* the borough council! True, but the borough council and the urban district council are the same only in personnel. When the council acts as urban sanitary authority, it has entirely different powers and is subject to a different control than when it acts as municipal authority. Its organization is fixed slightly by the Municipal Corporations Act, but the Public Health Acts provide for many officers, specify their duties, powers, qualifications, *et cetera*, and otherwise determine to no small extent what its organization shall be. The powers of the urban district council are stated in the Public Health Acts, and the control, as described in the previous chapters, is wide and far-reaching. These facts have often been overlooked, especially by the American student of English local government, but their importance can hardly be overvalued. There is but little similarity between the English borough, or urban county district, and the American city, but as between the two, the American city resembles far more the urban county district than the borough. But the most important fact to be noticed is that whenever the authority, be it district council, board of guardians or school board, exercises powers which we have been accustomed to consider as properly belonging to the municipality, it is subject to central administrative control, more or less strict according to the nature of the functions. Hence to say that the borough is quite free from central control is misleading, if not false. As municipal authority, it is less subject than the other local authorities, but the importance of this fact has been greatly exaggerated. It is the urban county district that needs to be studied more than the borough. Our

¹ *Supra*, pp. 208, 210.

problems are those connected with the former rather than the latter.

To summarize: it is found that the English system of central administrative control is theoretically sound, except in a few minor instances, that it has accomplished its purpose, administrative efficiency, and that it is now recognized as a permanent factor in English government. Local self-government pure and simple has been proven inefficient, and it has also been shown that it is possible to establish a system of central administrative control which does not destroy local autonomy, but which secures efficient administration, while not encroaching upon those ideas and principles for which Anglican institutions have so long been prized. Central control has been the goal towards which all decentralized systems have been moving, and the chief difference between England and the United States is that the former has adopted administrative control, while we have favored legislative control. The two countries are not far apart from the point of view of centralization, except that possibly central control in the United States is stronger and more intrusive into what are purely local affairs than in England. It is also certain that local government is much more efficient in England than in the United States, and it is not at all improbable that the systems of central control contribute much to explain this fact.

Whether the English system could not be somewhat decentralized without injuring its efficiency, is a difficult matter to decide. No rule or set of rules will apply to all provisions. Each case must be decided upon its own merits. It does seem probable, however, that some minor matters could be transferred to local authorities. The political capacity and executive ability of the people have been increasing, and if local self-government as far as consistent

with efficiency is desirable, a fact not usually denied, it seems probable that the local authorities could be given more freedom. Future changes will probably be in this direction. Care should be taken, however, that decentralization be introduced slowly, and that no changes be made in this direction until beneficial results are assured. The efficiency of the present system is too great to permit innovation or alteration upon theoretical grounds alone. It is also certain that complete decentralization will never be possible, for local officials will never reach that high stage of development where local interests will be subordinated to the welfare of the entire country, or where they will have the ability and experience even if they have the desire to secure the beneficial results that may be obtained under central control. Local interests are sure to conflict occasionally with general interests, and central administrative control has been proven to be the only adequate method of quickly and effectively protecting the latter. Some stimulus will always be needed. Some restraint must ever be exercised. Just at this point, the English system again shows its admirable qualities. How often has it been pointed out in the preceding chapters that the tendency of the system is for the control to make itself felt through its potential rather than through its active exercise. But absence of all control would result in the destruction of the present excellent influence through fear of actual control, and render it impossible to exercise supervision in the cases which must constantly arise where it is needed. The danger of unnecessary central interference is so slight as to need no consideration. The objections to the present system are, therefore, theoretical rather than practical. Consequently, important modifications can hardly be supported. Central administrative control is a permanent factor, and its most excellent results demand for it earnest consideration and unstinted praise.

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NOTE.—In the following bibliography, I have omitted the many standard works upon English history with which every one is familiar, for the reasons that they are widely known and that they contain very little information as to the relations of central and local government. I have also omitted many unimportant Parliamentary documents which have been consulted, and to which an occasional reference has been made in the foot-notes. They can all be found by referring to the index of the Sessional Papers, which is published annually. All important documents are mentioned below.

I have undertaken to divide the works consulted into four classes, and although the dividing lines may seem to be arbitrarily drawn, such a classification may be of some use to any one wishing to study central administrative control. The first division embraces the books, periodicals and reports that are of prime value and importance. Parliamentary reports form the principal portion of this class, but a few secondary sources are included. Many books, which are mere reprints of the statutes, have been placed in the second division, unless the editor or compiler has added valuable notes. Should the statutes not be available, these would, of course, be of great value. The fourth division consists of those works which from their titles might suggest that they contained valuable information, but which are in reality of no value from the present point of view. Between these two extremes are the second and third divisions; the latter embracing the material containing very little relating to central administrative control in England; the former, the material containing more information, but not of sufficient importance to merit first consideration. I do not claim this method of classification to be entirely scientific, but if it is of any value to other students, it will have served its purpose. It should not be forgotten that I have not undertaken, in the slightest degree, to pass upon the *real* value of the works thus classified, but simply to state, in a very general way, their relative importance from the standpoint of central administrative control.

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